

1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF WISCONSIN

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4 UNITED STATES OF AMERICA,)
5) Case No. CR 11-135
6 Plaintiff,) Milwaukee, Wisconsin
7)
8 vs.) August 20, 2012
9) 8:30 a.m.
10 ARVIND AHUJA,)
11) **VOLUME 4**
12 Defendant.) PAGES 709-879
13 -----

14 **TRANSCRIPT OF JURY TRIAL**
15 BEFORE THE HONORABLE CHARLES N. CLEVERT, JR.
16 UNITED STATES CHIEF DISTRICT JUDGE, AND A JURY

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Proceedings recorded by computerized stenography,
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1 P R O C E E D I N G S (8:39 a.m.)

2 THE COURT: Good morning.

3 IN UNISON: Good morning.

4 THE COURT: The jury is ready. Are you ready to
08:39 5 proceed?

6 MR. KIRSCH: Yes, Your Honor.

7 MS. SISKIND: Your Honor, we passed to the Court two
8 stipulations which we propose on read to the jury after Agent
9 Cook's testimony. What is Your Honor's preference? Would
08:39 10 Your Honor read them or should we --

11 THE COURT: The parties. The parties should read
12 them.

13 MS. SISKIND: Thank you, Your Honor.

14 (Jury in at 8:40 a.m.)

08:41 15 THE COURT: Good morning.

16 IN UNISON: Good morning.

17 MS. SISKIND: May I proceed, Your Honor?

18 THE COURT: You may proceed.

19 GEOFFREY COOK, GOVERNMENT WITNESS, PREVIOUSLY SWORN

20 DIRECT EXAMINATION

21 BY MS. SISKIND:

22 Q. Good morning, Agent Cook.

23 A. Good morning.

24 Q. When we left off on Friday, we were about to talk about
08:41 25 Government Exhibit 21. Do you have that there?

1 A. Yes, I do.

2 MS. SISKIND: If we could have that on the screen.

3 BY MS. SISKIND:

4 Q. What is Government Exhibit 21?

08:41 5 A. This is an e-mail chain which begins on July 8th, 2005, and
6 which ends Thursday, July 21st, 2005, between ahuja3803@aol.com,
7 and Ankush Tandon.

8 Q. And are there any other participants in this e-mail chain?

9 A. Yes, there is.

08:42 10 Q. Who would that be?

11 A. Kathryn Whittingham.

12 Q. Starting with the first e-mail in the chain on page 3, who
13 is that e-mail from?

14 A. That e-mail is from aahuja3803@aol.com and it is signed
08:42 15 "aa."

16 Q. And what is the date of that e-mail?

17 A. July 8th, 2005.

18 Q. Can you tell from looking at this e-mail chain what, if
19 anything, Ankush Tandon did with this e-mail from aahuja3803
08:42 20 regarding charge card limits?

21 A. Yes, I can. It appears he forwarded the e-mail to Kathryn
22 Whittingham and the Premier support unit at offshore, HBOS,
23 H-B-O-S, at HSBC.

24 Q. And what does HBOS stand for?

08:42 25 A. HSBC offshore.

1 Q. And can you tell from looking at this e-mail chain whether
2 Ms. Wittingham increased the defendant's credit card limit as he
3 requested?

4 A. Yes, she did.

08:43 5 Q. And was this fact communicated back to Dr. Ahuja?

6 A. Yes, it was.

7 Q. How can you tell?

8 A. On the first page of the three pages, Ankush Tandon sends an
9 e-mail back to aahuja3803 and he forwards the conversation and
08:43 10 says, "Dear Arvind. Please note. Thanks, Ankush."

11 Q. And did the defendant respond to that e-mail?

12 A. Yes.

13 Q. And what, if anything, did he say?

14 A. "Thanks aa."

08:43 15 Q. Now, can you the take a look at what's been marked for
16 identification as Government Exhibit 22. Do you have that?

17 A. Yes, I do.

18 Q. What is Government Exhibit 22?

19 A. This is an e-mail back and forth between Ankush Tandon and
08:43 20 aahuja3803. It begins -- both e-mails are dated 30
21 September 2005.

22 Q. And directing your attention to the first e-mail in the
23 chain, who is that e-mail from?

24 A. Starting at the bottom, it is from Ankush Tandon, HSBC.

08:44 25 MS. SISKIND: Your Honor, the government moves for the

1 admission of Government Exhibit 22.

2 MR. KIRSCH: No objection, Your Honor.

3 (Exhibit 22 received in evidence.)

4 MR. KIRSCH: It's fine. It's fine.

08:44 5 MS. SISKIND: If we could have that on the screen.

6 BY MS. SISKIND:

7 Q. Generally, what does this e-mail chain relate to?

8 A. A credit card limitation increase.

9 Q. Does that credit card relate to any particular account?

08:44 10 A. Yes, it does.

11 Q. And which account does it relate to?

12 A. HSBC-India and HSBC-Jersey.

13 Q. I want you to take a look at what's already in evidence --

14 MR. KIRSCH: Your Honor, I'm going to object to that
08:45 15 testimony. That's not what this document states.

16 THE COURT: One second. One second. You don't have
17 any need to argue. Approach.

18 (At side bar on the record.)

19 MR. KIRSCH: My objection is the document stands for
08:45 20 itself. It doesn't reference -- I don't think it references
21 accounts anywhere in these documents. You can look at the
22 e-mail from down at the bottom that says "Dear Arvind and
23 Namrata."

24 THE COURT: Sustained.

08:46 25 (End of discussion at side bar.)

1 BY MS. SISKIND:

2 Q. In the --

3 THE COURT: One second.

4 The last testimony is stricken and has to be
08:46 5 disregarded.

6 Proceed.

7 BY MS. SISKIND:

8 Q. In the e-mail that begins "Dear Arvind/Namrata," can you
9 read the first sentence, please?

08:46 10 A. "Please do let me know the outstanding items with the
11 HSBC-India check and with HSBC-Jersey and I will have them
12 resolved on priority."

13 Q. Now, moving on, do you have what's already in evidence as
14 Government Exhibit 32?

08:47 15 A. Yes.

16 Q. And what is Government Exhibit 32?

17 A. This is a letter dated November 16th, 2006, addressed to the
18 Premier Department, HSBC-Jersey.

19 Q. And do you see signatures on this letter?

08:47 20 A. Yes, I do.

21 Q. Do you see names both typed and written below those
22 signatures?

23 A. Yes.

24 Q. What names appear there?

08:47 25 A. Arvind Ahuja and Namrata Ahuja.

1 Q. What does the first sentence of this letter say?

2 A. "We are Premier clients with HSBC-Jersey."

3 Q. And what, if anything, is this letter requesting?

08:47 4 A. It is requesting PIN numbers, P-I-N, to be "couried" to an
5 address in the UK.

6 Q. Can you look at what's been marked for identification as
7 Government Exhibit 35.

8 MS. SISKIND: It's not in evidence yet, Ms. Johnson.

9 BY MS. SISKIND:

08:48 10 Q. Do you have that in front of you?

11 A. Yes, I do.

12 Q. What is Government Exhibit 35?

13 A. It is an e-mail from Ankush Tandon to aahuja3803@aol.com,
14 dated November 17, 2006.

08:48 15 MS. SISKIND: Government moves for the admission of
16 Exhibit 35.

17 MR. KIRSCH: No objection.

18 THE COURT: 35 is received.

19 (Exhibit 35 received in evidence.)

08:48 20 BY MS. SISKIND:

21 Q. How does the date on this e-mail compare to the date on the
22 letter we just looked at in Exhibit 32?

23 A. It's one day after. The letter in Exhibit 32 is dated
24 November 16, 2006, and this e-mail is dated November 17th, 2006.

08:48 25 Q. And what is the subject line of the e-mail on November 17th?

1 A. Address in London.

2 Q. And what, if anything, does Mr. Tandon say in this e-mail?

3 A. "You are welcome. We also got confirmation that the credit
4 card PINs would be delivered to the UK address."

08:49 5 Q. In the course of reviewing documents that were produced to
6 the government by HSBC, did you come across any document
7 suggesting how funds in the defendant's HSBC-Jersey account were
8 spent?

9 A. Yes, I did.

08:49 10 Q. If you can, look at what is already in evidence as
11 Government Exhibit 59.

12 A. Okay. I have it.

13 Q. What is Government Exhibit 59?

14 A. This is a letter dated July 21st, 2009, to the branch
08:49 15 manager at HSBC-Jersey, from Namrata Ahuja and Arvind Ahuja.

16 Q. What does the first line of this or first sentence of this
17 letter say?

18 A. "Dear sir, we the undersigned, Arvind and Namrata Ahuja,
19 request that you please wire transfer 14,686.20 euros from our
08:50 20 pound account. The account number is 0953."

21 Q. And the -- were you able to calculate the -- what the value
22 of that amount of euros was on July 21st, 2009?

23 A. Yes.

24 Q. And are those currency conversions in what's already in
08:50 25 evidence as Exhibit 91?

1 A. Yes.

2 Q. What was the value of that amount of euros on that date?

3 A. \$20,845.45.

4 Q. And with this letter in Exhibit 59, to whom are the Ahujas
08:50 5 directing that that \$20,000 be transferred?

6 A. Lanza & Baucina Limited.

7 Q. And can you remind the jury what that is?

8 A. That is a travel agency based in London that offers tours to
9 Italy.

08:50 10 Q. If you could, go back to what's already in evidence as
11 Government Exhibit 62. Might be the next document in your pile.

12 Can you remind the jury what Exhibit 62 is?

13 A. This is a letter to the manager, HSBC-Jersey, on
14 September 21st, 2009, from Arvind Ahuja and Namrata Ahuja.

08:51 15 Q. And what does this letter relate to?

16 A. The account closure request for account number ending 0953,
17 customer ID ending 1731.

18 Q. And what does the first sentence of this letter say?

19 A. "With reference to the captioned subject, request you please
08:51 20 close all the accounts under the above customer I.D."

21 Q. What, if anything, did the Ahujas direct that the bank do
22 with the funds from that account?

23 A. To "transfer the proceeds through a GBP," Great British
24 pound, "draft and courier the same to my below mentioned U.S.
08:51 25 address."

1 Q. And in reviewing the records produced by the bank, did you
2 find such a check?

3 A. Yes.

4 Q. Can you look at what's marked for identification as
08:52 5 Exhibit 64?

6 A. Yes.

7 Q. What is Exhibit 64?

8 A. This is a check from HSBC offshore, dated 19th October 2009,
9 to Mr. A and Mrs. NL Ahuja.

08:52 10 MS. SISKIND: Government moves for the admission of
11 64.

12 MR. KIRSCH: No objection.

13 THE COURT: 64 is received.

14 (Exhibit 64 received in evidence.)

08:52 15 BY MS. SISKIND:

16 Q. Now, looking at the top of this check, do you see a website
17 address that appears to the right of the HSBC logo?

18 A. Yes, I do.

19 Q. Can you read that web address, please?

08:52 20 A. Www.offshore.hsbc.com.

21 Q. And how much is this check for that HSBC offshore sent to
22 the Ahujas?

23 A. 4,696.71 pounds.

24 Q. Did you calculate what the value of that figure was on
08:52 25 October 19th, 2009?

1 A. Yes, I did.

2 Q. And how much was that in U.S. dollars?

3 A. \$7,702.26.

08:53

4 Q. In your review of records produced by HSBC, did you see any
5 references to the country Mauritius?

6 A. Yes.

7 Q. Can you look at what's already in evidence as Government
8 Exhibit 20? And if we go to the second page of that exhibit, to
9 whom is the letter on this page addressed?

08:53

10 A. The manager, The Hongkong & Shanghai Banking Corporation
11 Limited, Offshore Banking Unit.

12 Q. And in any particular country?

13 A. Yes, two lines down, Mauritius.

08:53

14 Q. If you could go down to the second-to-last paragraph in this
15 letter, can you read what it says in the first sentence?

16 A. "I further authorize you to open account with HSBC
17 Mauritius."

18 Q. And are there signatures on this page?

19 A. Yes.

08:54

20 Q. What, if any, names appear typed below the signatures?

21 A. Dr. Arvind Ahuja and Namrata Ahuja.

22 Q. And how about on the next page, the last page of Exhibit 20?
23 Do you see another letter?

24 A. Yes, I do.

08:54

25 Q. To whom is this letter addressed?

1 A. The Manager, the Hongkong & Shanghai Banking Corporation,
2 Ltd., Offshore Banking Unit.

3 Q. In what country?

4 A. Mauritius.

08:54 5 Q. And looking down to the second-to-last paragraph, can you
6 read the first sentence?

7 A. "I further authorize you to open an account with HSBC
8 Mauritius."

9 Q. Is this letter signed?

08:54 10 A. Yes.

11 Q. What names appear typed below the signatures?

12 A. Dr. Arvind Ahuja, Namrata Ahuja.

13 Q. And what is the date of these two letters to HSBC Mauritius?

14 A. August 9th, 2005.

08:54 15 Q. Have you reviewed the defendants 2006 to 2009 tax returns?

16 A. Yes.

17 Q. Are those the returns that are in evidence as Exhibits 12
18 through 15?

19 A. Yes.

08:55 20 Q. Have you also reviewed portions of his 2005 tax return?

21 A. Yes, I have.

22 Q. Did the defendant report any interest from HSBC-India on his
23 2005 through 2009 returns?

24 A. No.

08:55 25 Q. On his 2008 and 2009 returns specifically, did he report any

1 interest income from any other foreign bank?

2 A. No.

3 Q. Any bank besides HSBC?

4 A. Yes, he reported interest from other banks.

08:55 5 Q. And which foreign bank did he report interest income from in
6 2008 and 2009?

7 A. Citibank India.

8 Q. And did you review the 1099s from Citibank India?

9 A. Yes, I have.

08:55 10 Q. I want you to take a look at what's been marked for
11 identification as Government Exhibit 57. What is Exhibit 57?

12 A. This is an account-opening document for Citibank NRI
13 Business.

14 Q. Does this account application relate to any particular
08:56 15 individual?

16 A. Yes.

17 Q. And who would that be?

18 A. Arvind Ahuja.

19 Q. Do you see a date on this application?

08:56 20 A. Yes, I do.

21 Q. And what is the date?

22 A. 10/16/2008.

23 MS. SISKIND: Government moves for the admission of
24 Exhibit 57.

08:56 25 MR. KIRSCH: No objection.

1 THE COURT: 57 is received.

2 (Exhibit 57 received in evidence.)

3 BY MS. SISKIND:

4 Q. Now, looking at the top of the page under where it says
08:56 5 "Citibank NRI Business, Wealth Management for the Global
6 Indian," what is the title of this form?

7 A. "Citibank Rupee and FCNR Deposit Account Application."

8 Q. And what is the name that appears in the first line?

9 A. Arvind Ahuja.

08:57 10 Q. Does Dr. Ahuja give any particular e-mail address in the
11 information?

12 A. Yes.

13 Q. And what is that?

14 A. Natasha2@bloomberg.net.

08:57 15 Q. What, if anything, is listed for Dr. Ahuja's nationality and
16 country of residence at the top of this form?

17 A. American, USA.

18 Q. And if you go to the third page of this exhibit, do you see
19 a copy of a passport?

08:57 20 A. Yes, I do.

21 Q. And whose passport appears there?

22 A. Dr. Arvind Ahuja's.

23 Q. And what is the country of issue for this passport?

24 A. United States.

08:57 25 Q. Turning to the next page, do you see a check?

1 A. Yes, I do.

2 Q. And on whose account is this check drawn?

3 A. Arvind Ahuja or Namrata L. Ahuja.

4 Q. What is the amount for which this check is made out?

08:57 5 A. \$1 million.

6 Q. And what is the date of it?

7 A. 10/16/08.

8 Q. Now, if you could go back to the second page, do you see a
9 signature?

08:58 10 A. Yes, I do.

11 Q. And do you see several paragraphs of writing above that
12 signature?

13 A. Yes, I do.

14 Q. Prior to testifying today, did you help prepare a visual aid
08:58 15 that highlights some of the language in those paragraphs?

16 A. Yes.

17 MS. SISKIND: If we could have Exhibit B,
18 demonstrative B.

19 BY MS. SISKIND:

08:58 20 Q. And is this that visual aid?

21 A. Yes, it is.

22 Q. Can you read for the jury the paragraph that's been
23 highlighted from this page?

24 A. "It shall be my/our responsibility to educate
08:58 25 myself/ourselves and to comply" --

1 Q. Could you slow down, please?

2 A. "It shall be my/our responsibility to educate

3 myself/ourselves and to comply with all relevant laws,

4 regulations, and rules applicable to my/our use of offshore

08:59 5 wealth services, including any tax, foreign exchange, or capital

6 controls, and for any reporting or filing requirements that may

7 apply as a result of my/our country of citizenship, domicile of

8 residence, or the location where offshore wealth services

9 activities may be conducted. Offshore wealth services means any

08:59 10 product or services provided to individual consumers who reside

11 in countries other than the country in which the providing

12 business is located."

13 Q. Now, if you go to the fifth page of Government Exhibit 57,

14 do you have that?

08:59 15 A. Yes.

16 Q. As what is the title of this document, in the upper

17 left-hand corner?

18 A. "NRI Account Statement of Arvind Ahuja."

19 Q. And do you see several columns that start "Product," "At,"

09:00 20 "Currency," and so forth?

21 A. Yes.

22 Q. What is listed under the "At" column?

23 A. IND.

24 Q. And if you look down at the bottom of the form, do you see a

09:00 25 definition of what that code IND stands for?

1 A. Yes.

2 Q. And what does IND mean on this form?

3 A. Your account with Citibank N.A. India branch.

09:00 4 Q. In your review of the documents from Citibank, have you
5 reviewed other account applications in addition to the one in
6 Exhibit 57?

7 A. Yes.

8 Q. If you could, go to what's been marked for identification as
9 Defendant's Exhibit 2060. Do you have that?

09:00 10 A. Yes, I do.

11 Q. What is that document?

12 A. This is a Citibank NRI business rupee checking/savings
13 account application form.

14 Q. For which account holder?

09:01 15 A. Arvind Ahuja.

16 Q. And do you see a date stamped in the middle of the page?

17 A. Yes.

18 Q. And what is the date of this application?

19 A. October 16th, 2008.

09:01 20 MS. SISKIND: Government moves for the admission of
21 Defendant's Exhibit 2060.

22 MR. KIRSCH: Your Honor, can I see a copy of it?

23 (Counsel confer.)

24 MR. KIRSCH: No objection.

09:01 25 THE COURT: It's received.

1 (Exhibit 2060 received in evidence.)

2 BY MS. SISKIND:

3 Q. Do you see a -- sorry.

4 Going to the fourth page of this document, do you see
09:01 5 a signature? I'm sorry. The fifth page of this document.

6 A. Yes, I do.

7 Q. And what is the date that appears below the signature?

8 A. 10/16/2008.

9 Q. Now, can you tell by looking at the bottom of page 5 how
09:02 10 this account or where this account was applied for?

11 A. Yes, I can.

12 Q. And what does the form indicate?

13 A. There's a stamp and the stamp says New York, New York,
14 original seen and verified. There's a box that's checked. "Met
09:02 15 in person" is checked, and "Signed in my presence" is checked.

16 Q. And as you're flipping through this document, do you see any
17 forms -- copies of forms of identification for Dr. Ahuja?

18 A. Yes.

19 Q. What do you see?

09:02 20 A. I see a driver's license from the State of Wisconsin.

21 Q. And looking at the next page?

22 A. A passport for Arvind Ahuja.

23 Q. If you could go to page 3, what type of account is Dr. Ahuja
24 opening with this form?

09:03 25 A. An NRO account.

1 Q. And what is indicated to be the amount credited to this
2 account?

3 A. 300,000.

4 Q. Do you see a Part C in this Section 6 on the top of the
5 form?

6 A. Yes, I do.

7 Q. What is Part C?

8 A. It is part of the application which asks the question "City
9 in which you want to hold the account. Tick only one."

10 Q. And do you see an X next to something in that section?

11 A. Yes, I do.

12 Q. What is checked regarding the city in which the defendant
13 wanted his account to be held?

14 A. New Delhi.

15 Q. Can you go to page 6 of this exhibit. Do you see Section 9,
16 declarations?

17 A. Yes, I do.

18 Q. Does this declaration on this Citibank account contain the
19 same language we looked at in your visual aid a moment ago, in
20 paragraph 2?

21 A. Paragraph 9 of this one?

22 Q. Section 9, paragraph 2 on page 6 of the exhibit.

23 A. Yes, it is.

24 Q. Now, moving on to a different subject, did you attempt to
25 estimate the amount of interest income that the defendant earned

1 from his HSBC-India account during the years 2006 through 2009?

2 A. Yes, I did.

3 Q. Can you take a look at what's been marked for identification
4 as Government Exhibit 71, the first page?

09:04 5 A. Yes.

6 Q. What is Government Exhibit 71?

7 A. This is a summary of the unreported interest calculation
8 that I did.

9 Q. Is this summary a fair and accurate depiction of your
09:05 10 interest income calculation?

11 A. Yes, it is.

12 MS. SISKIND: Government moves for the admission of
13 the first page of 71. The remaining pages are in evidence.

14 THE COURT: Is there any objection?

09:05 15 MR. KIRSCH: Yes. If it's an estimate, Your Honor, I
16 object to foundation.

17 THE COURT: One second.

18 (Brief pause.)

19 THE COURT: Approach.

09:06 20 (At side bar on the record.)

21 MS. SISKIND: I think Your Honor doesn't have the most
22 up-to-date copy. I gave a new one to your courtroom deputy. It
23 looks like these dates.

24 THE COURT: Do you wish to be heard respecting
09:06 25 foundation?

1 MS. SISKIND: Yes, Your Honor. I can ask one more
2 question. I think he will testify that he was only able to
3 estimate unreported income, and there were certain limitations
4 he faced in reaching his calculations. But this is the
09:06 5 calculation he was able to come up with, and he later learned by
6 looking at the defendant's amended returns that the amount of
7 interest income is actually much higher than he was able to
8 calculate.

9 THE COURT: What is -- what do you anticipate
09:07 10 respecting the bases for the estimates?

11 MS. SISKIND: The screen shots, Your Honor, his review
12 of the screen shots.

13 THE COURT: All right. I'll sustain the objection at
14 this stage. You may proceed.

09:07 15 (End of discussion at side bar.)

16 THE COURT: The objection is sustained.

17 BY MS. SISKIND:

18 Q. When trying to calculate interest income, how come your
19 calculations are only an estimation as opposed to some
09:07 20 definitive calculation of interest income?

21 A. Because of the lack of availability of records that I had to
22 make the calculation.

23 Q. What records did you have?

24 A. I had the screen shots that we've seen that are located on
09:07 25 the server at HSBC in the United States.

1 Q. And what kind of challenges were posed by using those screen
2 shots as opposed to a different source of information to make
3 your calculations?

4 A. If I had monthly statements for each month for all the
09:08 5 years, I would have what I would consider to be complete
6 records. However, using only the screen shots, it doesn't come
7 every month for all four years. For some years you only get a
8 few screen shots, a handful of these screen shots, and for
9 others I'll get two or three screen shots in a one-month period.
09:08 10 So there are gaps in the information that I needed to make an
11 accurate calculation.

12 Q. Did the bank in producing records pursuant to the grand jury
13 subpoena provide monthly account statements?

14 A. No.

09:08 15 Q. What did they provide to you regarding interest income?

16 A. The screen shots that we've already seen.

17 MS. SISKIND: The government moves for the admission
18 of Exhibit 71.

19 MR. KIRSCH: No objection.

09:08 20 THE COURT: Received.

21 (Exhibit 71 received in evidence.)

22 BY MS. SISKIND:

23 Q. Now, can you explain to the jury how it was that you used
24 the screen shots to estimate unreported interest income for
09:09 25 those years?

1 A. As I said on Friday, one of the first things I did with all
2 of the screen shots was type them into Microsoft Excel in order
3 to allow me to sort them by account number, by date, by maturity
4 date, and by currency.

09:09 5 And the first thing I did was sort them into currency
6 and into year so I'd be able to compare -- to compare like
7 items. Then I pulled the interest figure from each screen shot
8 for the most -- for the latest screen shot available of the year
9 for each account number and used that figure, converted the
09:09 10 figures using the exchange rate of 12/31 for each year into U.S.
11 dollars, and then subtotaled them.

12 Q. And if on cross-examination defense counsel points out any
13 errors in your calculation, will you make those changes to your
14 summary?

09:10 15 A. Yes.

16 Q. What is the significance of the "Source" column on the
17 right-hand side of this chart?

18 A. The source represents the same Bates numbers, B-A-T-E-S,
19 that we referenced on Friday, and that just refers to the
09:10 20 individual screen shots that I used.

21 Q. And are all of the screen shots that you used in making your
22 calculations contained on the subsequent pages in Exhibit 71?

23 A. Yes.

24 Q. Can you go through each year and tell the jury how much
09:10 25 unreported interest income you were able to calculate for those

1 years?

2 A. 2006, \$191,365.38.

3 2007, \$355,797 U.S. dollars, 54 cents.

4 2008, \$385,594.54.

09:10 5 2009, \$293 --

6 Q. I'm sorry. I think you have the wrong chart. I'm going to
7 give you the Exhibit 71 that's in evidence.

8 A. Sure.

9 (Document tendered to the witness.)

09:11 10 A. Okay.

11 BY MS. SISKIND:

12 Q. Can you read those numbers again?

13 A. 2006, \$191,365.38.

14 2007, \$355,063.27.

09:11 15 2008, \$384,1183.06.

16 And 2009, \$294,892.82.

17 Q. And can you just explain to the jury why it was you had some
18 other numbers on a chart you were reading off of?

19 A. Yes. I made a couple corrections. In reviewing the chart
09:11 20 that I previously prepared I made a couple corrections to it,
21 and it looks like this is the older chart, not the most recent
22 one.

23 Q. So based on your revised calculations, what is the total
24 amount of unreported interest income you were able to attribute
09:12 25 to the defendant's HSBC-India accounts using the screen shots?

1 A. \$1,225,504.53.

2 Q. After you made -- let me ask you this. When did you first
3 attempt to make calculations of unreported interest income? At
4 what point in your investigation?

09:12 5 A. I probably began this process in January of 2011, and I
6 would have come up with the first screen that we saw around
7 March 2011.

8 Q. Now, after you made -- started making these calculations
9 between January and March of 2011, did you come across any
09:12 10 evidence that suggested the defendant's total unreported
11 interest income was actually higher than \$1.2 million for those
12 years?

13 A. Yes, I did.

14 Q. And what evidence would that be?

09:12 15 A. The amended tax returns for 2006 through 2009.

16 Q. Did you review amended tax returns for those years?

17 A. Yes, I did.

18 Q. Did you also review the amended tax return filed by the
19 defendant for the year 2005?

09:13 20 A. Yes.

21 Q. And are those the tax returns that are already in evidence
22 as Defendant's Exhibits 2087 through 2091?

23 A. Yes.

24 Q. When did the defendant file amended tax returns for those
09:13 25 years?

1 A. May 2011.

2 Q. And directing your attention to July 2010, a little less
3 than a year earlier, what, if anything, happened with respect to
4 your investigation of the defendant?

09:13 5 A. The Department of Justice mailed Dr. Arvind Ahuja a letter
6 notifying him of the investigation.

7 Q. Now, if you could, take a look at, for example, the 2005
8 amended return in Defendant's Exhibit 2087.

9 A. Okay.

09:13 10 Q. Do you see a part called "Explanation of Changes" on the
11 third page?

12 A. Yes, I do.

13 Q. Can you read what the explanation is for why this amended
14 return was filed?

09:14 15 A. "The taxpayer's original 2005 income tax return did not
16 account for all their foreign bank accounts and the interest
17 income earned by these accounts during 2005. The taxpayers are
18 amending their 2005 tax return to correct the omission."

19 Q. Did you see a similar explanation to this on the remaining
09:14 20 amended returns?

21 A. Yes, I did.

22 Q. And did these returns, in fact, report interest income from
23 HSBC?

24 A. Yes.

09:14 25 Q. And on Schedule B, Part III, the foreign bank account

1 question, what box was checked regarding whether the defendant
2 had foreign bank accounts during the years 2005 through 2009?

3 A. Yes.

4 Q. The "Yes" box is checked?

09:15 5 A. Yes.

6 Q. Does the defendant indicate in what countries he held
7 foreign bank accounts during those years?

8 A. United Kingdom and India.

9 Q. After the defendant filed amended tax returns for the years
09:15 10 2005 through 2009, was he required to pay additional tax to the
11 IRS?

12 A. Yes.

13 Q. And are there actually copies of checks within each of these
14 exhibits that correspond to each amended return?

09:15 15 A. Yes.

16 Q. Have you compared the defendant's 2005 to 2009 tax returns
17 as originally filed with the figures on the amended returns?

18 A. Yes.

19 Q. Can you look at what's been marked for identification as
09:15 20 Government Exhibit 70?

21 A. Okay.

22 Q. What is Exhibit 70?

23 A. This is a summary chart that compares the interest income
24 originally reported on the original Forms 1040 and the interest
09:16 25 income reported on the amended Forms 1040X.

1 Q. And what years are covered by this summary?

2 A. 2005 through 2009.

3 MS. SISKIND: The government moves for the admission
4 of Exhibit 70.

09:16 5 MR. KIRSCH: No objection.

6 THE COURT: 70 is received.

7 (Exhibit 70 received in evidence.)

8 BY MS. SISKIND:

9 Q. Can you tell the jury what the source of the information in
09:16 10 each column is?

11 A. The first column, "Interest Income Per Form 1040," that's
12 going to be the original Forms 1040, the interest income per
13 Form 1040X. That 1040X refers to the amended return. And the
14 unreported interest income would be the difference between the
09:17 15 two columns.

16 Q. What is the total amount of interest income that the
17 defendant failed to report on his 2005 original tax return?

18 A. \$719,079.

19 Q. How about 2006?

09:17 20 A. \$315,858.

21 Q. 2007?

22 A. \$463,480.

23 Q. 2008?

24 A. \$699,946.

09:17 25 Q. 2009?

1 A. \$566,660.

2 Q. And what is the total amount of interest income that the
3 defendant failed to report on his tax returns for the years 2005
4 through 2009?

09:17 5 A. \$2,765,023.

6 MS. SISKIND: I have no further questions.

7 MR. KIRSCH: Your Honor, can I just have one minute?
8 I need to look at something.

9 THE COURT: Absolutely.

09:18 10 (Brief pause.)

11 CROSS-EXAMINATION

12 BY MR. KIRSCH:

13 Q. Good morning, Agent Cook.

14 A. Good morning.

09:19 15 Q. Agent Cook, I've got some questions for you about your
16 testimony and about some of the documents that you've talked
17 about on your direct examination over the past couple of days,
18 and I'm going to talk to you about a lot of the documents that
19 Ms. Siskind just showed you.

09:20 20 But before we talk about those documents in any
21 detail, I'd like you to tell the jury from where you got those
22 documents. The HSBC documents.

23 A. From HSBC.

24 Q. In the United States. Correct?

09:20 25 A. Correct.

1 Q. Sir, you testified on direct examination, I believe, that
2 all of the documents were -- that are Bates-labeled HSBC NRI or
3 HSBC-DOJ that are in this courtroom here came from HSBC in the
4 United States. Correct?

09:20 5 A. Correct.

6 Q. All of the HSBC documents in this case, every single one
7 that you walked through on direct examination and every single
8 one that we're going to go through during cross-examination,
9 were maintained at HSBC in the United States. That's correct,
10 isn't it?

09:21

11 A. Or a copy of them.

12 Q. So you have an original that was not maintained?

13 A. No. Just to be clear, I'm not sure where precisely an
14 original document would have been maintained. But if through an
15 e-mail or for some other reason a copy of a document was
16 maintained in HSBC in the United States, that's how I would have
17 received the document.

09:21

18 Q. Sir, do you remember testifying on Friday afternoon on
19 direct examination, Ms. Siskind asked you the following
20 question:

09:21

21 "QUESTION: Among the records produced to the
22 government by HSBC, which I believe you testified were
23 maintained in the United States, did those records contain any
24 statements for the defendant's bank accounts at HSBC?

09:21

25 "ANSWER: No, they did not."

1 I can show you the transcript if you'd like to see it.

2 A. No. I do remember testifying.

3 Q. Do you remember that?

4 A. Yes. Yes.

09:21 5 Q. Do you remember her asking you and specifically saying "I
6 believe you testified they were maintained in the United
7 States"? Do you recall that?

8 A. I do. But I just want to be clear. Is this referring to
9 the HSBC-USA account statements?

09:22 10 Q. Let me read it again.

11 A. Okay.

12 Q. "QUESTION: Among the records produced to the government by
13 HSBC" --

14 Okay?

09:22 15 A. Yes.

16 Q. You agree with me that means all of the records produced to
17 the government by HSBC, right?

18 A. Sure.

19 Q. -- "which I believe you testified were maintained in the
09:22 20 United States." Correct?

21 A. Correct.

22 Q. So on cross-examination your testimony is the same as it was
23 on direct examination, that these records were maintained in the
24 United States, correct?

09:22 25 A. Yes.

1 Q. Sir, you have no evidence, none, that any of these documents
2 ever went to India. Isn't that right?

3 A. Of course, testimony.

4 Q. There's no evidence on any of these documents -- there's no
09:23 5 testimony. You sat here for four days. There's no testimony in
6 this case that one single document was ever sent to India.

7 THE COURT: Rephrase. Rephrase, please.

8 BY MR. KIRSCH:

9 Q. Sir, there's been no testimony --

09:23 10 THE COURT: Rephrase.

11 BY MR. KIRSCH:

12 Q. Sir, you have no evidence and no personal knowledge that any
13 of these documents ever went to India, do you? The answer is
14 no, isn't it?

09:23 15 A. When you say "personal knowledge," does that include
16 conversations that I had with other people?

17 Q. No. Sir, you have no personal knowledge yourself that any
18 of these documents ever went to India, correct?

19 A. Yes, I do.

09:23 20 Q. You have -- you know that these documents went to India
21 based on the documents and the testimony in this courtroom.

22 A. Yes. There's corroboration between documents --

23 Q. Sir, I'm not asking you --

24 THE COURT: One second. Approach.

09:24 25 (At side bar on the record.)

1 THE COURT: I interrupted for several reasons. The
2 first is, as phrased you're inviting him to give hearsay. So I
3 just wanted you to be alert to that.

4 MR. KIRSCH: Yeah, I don't want to do that. And I'm
09:24 5 trying to ask based on his personal knowledge.

6 THE COURT: I understand that.

7 MR. KIRSCH: -- and I ask that you just instruct him
8 to answer the question based on his personal knowledge, not what
9 others may or may not have said to him.

09:24 10 THE COURT: Based upon -- if I were to ask him to do
11 that it would invite him to give hearsay. I think what you're
12 trying to do is ask him whether or not he has direct information
13 as opposed to personal knowledge, because personal knowledge can
14 encompass with reference to hearsay.

09:25 15 MR. KIRSCH: Okay. I'll ask it that way.

16 THE COURT: Secondly, please be careful about
17 injecting your opinion or testifying. The way that you're
18 phrasing your questions, you are putting into the questions your
19 interpretation of what has transpired. So please be careful.

09:25 20 MR. KIRSCH: Okay.

21 (End of discussion at side bar.)

22 THE COURT: Proceed.

23 BY MR. KIRSCH:

24 Q. Sir, I'm going to ask you based on what you've seen and
09:25 25 observed.

1 A. Okay.

2 Q. Do you have any direct knowledge that any of these documents
3 were maintained in India?

4 A. No.

09:25 5 Q. None of these documents were obtained from HSBC-Jersey, were
6 they?

7 A. No.

8 Q. None of the documents were obtained by Citibank India or any
9 Citibank branch in India, correct?

09:26 10 A. To my knowledge.

11 Q. Sir, now we walked through these letters, and I'm going to
12 go through these with you in some detail, but I'd like you to --

13 MR. KIRSCH: First, James, can you pull up Government
14 Exhibit 53.

09:26 15 Your Honor, I think the computer is on -- thank you.

16 BY MR. KIRSCH:

17 Q. Okay, sir. Agent Cook, do you see Government Exhibit 53?

18 A. I don't. This is still turning on. Yes, I do.

19 Q. Okay. That's an e-mail from Priti Dhanani to
09:27 20 natasha2@bloomberg.net; is that correct?

21 A. Yes.

22 Q. And do you see there it indicates an attachment, a letter
23 down at the bottom?

24 A. Yes.

09:27 25 MR. KIRSCH: James, can you go to the second page of

1 that letter or that e-mail? And blow up that letter.

2 BY MR. KIRSCH:

3 Q. Do you see that letter?

4 A. Yes, I do.

09:27 5 Q. It's unsigned, correct?

6 A. Correct.

7 Q. And it's addressed to the manager, HSBC-NRI Services,
8 correct?

9 A. Yes.

09:27 10 Q. The letters that have been introduced as exhibits in this
11 case that are similar to this all take a similar form, correct?

12 A. Yes.

13 Q. Now, sir, you don't have any direct knowledge or personal
14 knowledge as to who drafted these letters, do you?

09:27 15 A. Correct.

16 Q. And as you've gone through these exhibits, you see that
17 several of the letters that have been admitted in this case are
18 drafted HSBC-USA or HSBC-NRI, correct?

19 A. Yes.

09:28 20 Q. I'd like to show you Exhibit 82, which you testified about
21 on direct examination.

22 MR. KIRSCH: And if you can, pull up the text of that
23 letter, James.

24 BY MR. KIRSCH:

09:28 25 Q. First, at the very top, this was the letter that you

1 testified to on direct examination that had to do with CDs that
2 were maturing. Do you see that?

3 A. Yes, I do.

4 Q. And do you see the CD numbers there?

09:28 5 A. Yes, I do.

6 Q. You're familiar with those numbers, correct?

7 A. Yes.

8 Q. They appear on some of the screen shots that you've put into
9 evidence in 69 and 71, correct?

09:29 10 A. Yes.

11 Q. Do you see there they're referred to as CD numbers?

12 A. Yes.

13 Q. Can you tell the jury to whom that letter was addressed?

14 A. The manager, HSBC-NRI Services USA.

09:29 15 Q. And these are talking about NRO CDs, correct?

16 A. Correct.

17 Q. And the CDs are going to be credited to NRO savings,
18 correct?

19 A. Correct.

09:29 20 Q. And NRO accounts were taxable in India, correct?

21 A. Yes.

22 Q. Now, I'd like you to go down to --

23 MR. KIRSCH: Just scroll down on that page a little
24 bit, James. And blow up that stamp.

09:29 25 BY MR. KIRSCH:

1 Q. Does that stamp, sir, indicate to you where this letter was
2 received?

3 A. Yes. Sighted, yes.

4 Q. Where?

09:29 5 A. HSBC NY rep office.

6 Q. New York, New York, correct?

7 A. Correct, yes.

8 Q. Sir, you've walked through a series of e-mails this morning,
9 and I want to show you some of those e-mails. If we can start
09:30 10 with Number 22, Government Exhibit 22.

11 MR. KIRSCH: James, you've got to blow up the bottom
12 half of the e-mail, please. Okay.

13 BY MR. KIRSCH:

14 Q. That's, of course, the e-mail that's been admitted in
09:31 15 evidence, sir. Do you see the bottom is an e-mail from Ankush
16 Tandon?

17 A. Yes.

18 Q. Do you see that? To the e-mail address aahuja3803@aol.com.

19 A. Yes.

09:31 20 Q. Sir, when you read that e-mail -- tell the jury the e-mail
21 address from which that e-mail was sent.

22 A. Ankush.k.tandon@us.hsbc.com.

23 Q. And then there's a reply to that e-mail that you talked
24 about, and to whom is the reply e-mail sent?

09:32 25 A. The same e-mail address, ankush.k.tandon@us.hsbc.com.

1 Q. Do you see down there at the bottom of the e-mail -- the
2 full address got cut off, but do you see where it says Ankush
3 Tandon, HSBC, 452 Fifth Avenue?

4 A. Yes, I do.

09:32 5 Q. You know that to be an address in New York, New York,
6 correct?

7 A. Yes.

8 Q. I'd like to show you what's been admitted as Defendant's
9 Exhibit 2057. Do you recognize this as the letter from -- I'm
09:33 10 sorry -- to the Department of Homeland Security from HSBC,
11 requesting a visa, a work visa for Ankush Tandon?

12 A. Yes, I do.

13 Q. I'd like to go to the second page of that letter in the
14 first paragraph.

09:33 15 Do you see there in the first line of that paragraph
16 where it indicates, "Mr. Tandon has been employed with HSBC
17 Bank-USA N.A. in the United States since July 2004"?

18 A. Yes.

19 Q. You don't have any reason to dispute that, do you, sir?

09:33 20 A. No.

21 Q. I'd now like to show you Defendant's Exhibit 2203. Sir, do
22 you recognize this to be the resume of Priti Dhanani?

23 A. Yes.

24 Q. Now, you've met Priti Dhanani, have you not?

09:34 25 A. Yes.

1 Q. You interviewed her in this case?

2 A. Correct.

3 Q. You met with her for about four or five hours one day,
4 didn't you?

09:34 5 A. Yes.

6 Q. And that was after Dr. Ahuja had been indicted, right?

7 A. Correct, yes.

8 Q. You met with her at either your office or Mr. Sullivan's
9 office in Washington, D.C., did you not?

09:34 10 A. That's correct.

11 Q. She was represented by two lawyers from New York?

12 A. I believe so, yes.

13 Q. Now, under her experience --

14 MR. KIRSCH: James, can you blow that up?

15 BY MR. KIRSCH:

16 Q. Do you see where it indicates that she works at HSBC
17 Bank-USA?

18 A. Right. I see -- yes.

19 Q. Sir, I'd now like to show you what you talked about this
09:35 20 morning. I'd like to show you Government's Exhibit 32.

21 MR. KIRSCH: And if you can, blow that up, James.

22 BY MR. KIRSCH:

23 Q. Do you remember talking about this document this morning on
24 direct examination?

09:35 25 A. Yes, I do.

1 Q. And you'd agree -- does this letter look similar in form to
2 the letter in Government's Exhibit 53 that was blank and
3 unsigned and sent by Priti Dhanani? I can show you that letter
4 if you'd like.

09:35 5 A. Yes, it looks similar, yes.

6 Q. You don't have any idea who wrote this letter or who
7 addressed it, correct?

8 A. No.

9 Q. And you testified on direct examination that this was
09:36 10 dealing with the issuance of PINs for credit card numbers,
11 correct?

12 A. Correct.

13 Q. You retrieved this document or received this document from
14 HSBC-USA, right?

09:36 15 A. Correct.

16 Q. Let's go to Government Exhibit 35. Sir, this was the e-mail
17 that I think you testified to on direct examination that was
18 sent a day later to aahuja3803, indicating that the credit card
19 PINs would be delivered, correct?

09:36 20 A. Yes.

21 Q. From whom was the letter sent?

22 A. Ankush K. Tandon.

23 Q. The same Ankush K. Tandon that worked at HSBC-USA, correct?

24 A. Correct.

09:36 25 Q. I'd now like to show you -- I think you testified on Friday

1 about Government Exhibit 42, which is an account application --
2 application. You've seen this document before, have you not?

3 A. Yes.

4 Q. And you see there on the front where it says "NRI status
5 confirmed as per passport copies enclosed," "Scanned and sent on
6 January 8" -- or 28, 2008:

7 A. Yes, I do.

8 Q. I'd like --

9 MR. KIRSCH: James, can you pull up the last page of
10 that document. It's Bates number 7784. Down at the bottom.
11 Can you blow up the stamp?

12 BY MR. KIRSCH:

13 Q. Do you see that, sir?

14 A. Yes, I do.

15 Q. Now, this document you obtained from HSBC-USA, correct?

16 A. Correct.

17 Q. Do you see there where it indicates HSBC Bank-USA, South
18 Asian Banking, New York, New York?

19 A. Yes, I do.

20 Q. Sir, I'd like to show you Government Exhibit 62 which you
21 testified about this morning. Do you recall your testimony
22 about that document, sir?

23 A. Yes, I do.

24 Q. And this document, this letter from September 21, 2009,
25 looks similar in form to the blank letter in Government

1 Exhibit 53, correct?

2 A. Correct.

3 Q. You don't have any idea who wrote this letter, correct?

4 A. Correct.

09:38 5 Q. Do you see in the middle of the page an address,

6 6321 Parkview Road, Greendale, Wisconsin?

7 A. Yes.

8 Q. You know that to be Dr. Ahuja's home address here in

9 Greendale, correct?

09:39 10 A. Correct.

11 Q. So this letter indicates that he wanted the money just sent

12 to him at his house in Greendale, Wisconsin, correct?

13 A. Correct.

14 Q. This document -- I may have asked this but if I haven't,

09:39 15 this document was obtained from HSBC-USA, correct?

16 A. Correct.

17 Q. Sir, you have -- did you serve a subpoena on HSBC-India?

18 A. No.

19 Q. You didn't?

09:39 20 A. No.

21 Q. You didn't think that it would be important to retrieve

22 documents from HSBC-India as part of your investigation?

23 A. I would have loved to. That would have been great.

24 Q. But you didn't do it.

09:40 25 A. My subpoena authority or the subpoena authority from the

1 court doesn't extend beyond the U.S.

2 Q. Well, sir, let's talk about that for a few minutes. You
3 testified that you've been an IRS Agent for almost three years,
4 right?

09:40 5 A. Correct.

6 Q. And you've testified that you received training in Glynco,
7 Georgia, for seven or eight weeks, correct?

8 A. Seven months.

9 Q. Seven months' training.

09:40 10 A. Correct.

11 Q. Correct? So you are familiar with the process called
12 letters rogatory, correct?

13 A. I am not.

14 MS. SISKIND: Objection, Your Honor. Calls for legal
09:40 15 testimony.

16 THE COURT: Overruled.

17 BY MR. KIRSCH:

18 Q. Sir, you've never heard of the process known as legals
19 rogatory?

09:40 20 A. No.

21 Q. Well, let me ask you some questions about that process.
22 Sir, as an IRS special agent --

23 THE COURT: One second. Ask another question, please.

24 BY MR. KIRSCH:

09:41 25 Q. Sir, as an IRS --

1 MR. KIRSCH: Your Honor, I -- I'll ask another
2 question.

3 BY MR. KIRSCH:

4 Q. As an IRS special agent, you spent seven months in Glynco,
09:41 5 Georgia. You're the case agent on this case, correct?

6 A. Yes.

7 Q. Are you aware that the letters rogatory process --

8 THE COURT: One second. Approach, please.

9 (At side bar on the record.)

09:41 10 THE COURT: Would you please tell me where you're
11 going?

12 MR. KIRSCH: Yes. Your Honor, we're going to call a
13 witness who is going to talk about the letters rogatory process.
14 But we want to -- I want to establish with him that the letters
09:42 15 rogatory process is available on the website, that there are
16 treaties between India and the United States.

17 THE COURT: He's already testified he's not familiar
18 with it. Ask another question, please.

19 MR. KIRSCH: Your Honor, can I for the record --

09:42 20 THE COURT: You have to move on. Under Rule 403 I'll
21 require you to move on. If you're asking him about legal
22 processes, he's not the lawyer.

23 MR. KIRSCH: I'm not going to ask him about the
24 process.

09:42 25 THE COURT: And you are trying to inject into the

1 record something that this witness has no knowledge of and you
2 can't do that.

3 MR. KIRSCH: Your Honor, I will not ask him a single
4 question about the process. I just want --

09:42 5 THE COURT: Your question said -- let me talk about
6 the process. You just -- in your question, you asked about the
7 process.

8 MR. KIRSCH: I'll take that -- I don't want to ask him
9 any questions about the process because he's not familiar with
09:42 10 it.

11 THE COURT: That's the point.

12 MR. KIRSCH: Okay.

13 (End of discussion at side bar.)

14 BY MR. KIRSCH:

09:43 15 Q. Sir, are you familiar with the Department of Justice
16 Internet website?

17 A. I know they have one. I certainly haven't been to it
18 recently or frequently.

19 Q. Have you ever looked at it?

09:43 20 A. Yes.

21 Q. Have you ever seen any reference to letters rogatory on the
22 Department of Justice website?

23 A. I don't even know how to spell that.

24 Q. Sir, are you familiar with the Department of Justice
09:43 25 Criminal Resource Manual?

1 A. No, I'm not.

2 Q. Have you ever seen the Department of Justice's Criminal
3 Resource Manual?

4 MS. SISKIND: Objection. Asked and answered.

09:43 5 MR. KIRSCH: That's a different question, Your Honor.

6 THE COURT: Overruled.

7 BY MR. KIRSCH:

8 Q. Have you ever seen it?

9 A. No.

09:43 10 Q. When reviewing the Department of Justice's website, have you
11 ever seen a link to their Criminal Resource Manual?

12 A. No.

13 Q. Sir, are you familiar with the treaty on mutual legal
14 assistance in criminal matters signed between India and the
09:44 15 United States in October of 2001?

16 A. I know what an MLAT is, which is that mutual legal
17 assistance treaty. I'm not very familiar with U.S.-India 2001.

18 Q. In the course of your investigation in this case, as part of
19 your investigative process, you did not familiarize yourself
09:44 20 with the ways in which evidence can be obtained by the
21 government in foreign countries?

22 A. I did.

23 Q. But you never looked -- you don't even know how to spell
24 letters rogatory.

09:45 25 A. No.

1 Q. You don't know anything about the Department of Justice's
2 Criminal Resource Manual.

3 A. No.

4 Q. Do you know anything about the Department of Justice's
09:45 5 office of international affairs?

6 A. I do.

7 Q. Did you discuss with them letters rogatory?

8 A. No.

9 Q. Did you ask anybody in the State Department about letters
09:45 10 rogatory?

11 A. No, I did not.

12 Q. Are you familiar, sir, with the term Interpol?

13 A. Yes, I am.

14 Q. Tell the ladies and gentlemen of the jury what Interpol is.

09:45 15 A. I'm familiar with the term. I'm not familiar of how broad
16 their jurisdiction is. I believe it stands for "international
17 police."

18 Q. Is that all you know about Interpol is what it stands for?

19 A. I know very little about Interpol, but I can tell you that I
09:45 20 believe it's shared resources among countries. But that is
21 about it.

22 Q. That's the extent of your knowledge.

23 A. Yes.

24 Q. You never looked into that as part of the course of your
09:45 25 investigation here, correct?

1 A. No, I did not.

2 Q. Sir, are you familiar with the Hague Convention?

3 A. Once again, I've heard the name before.

4 Q. But that's it.

09:46 5 A. That's it.

6 Q. You didn't think that it was important in the course of this
7 investigation to familiarize yourself with those treaties
8 between India and the United States that deal with obtaining
9 evidence, including testimony in foreign countries, did you?

09:46 10 A. Correct.

11 Q. Are you familiar with the Indian Central Bureau of
12 Investigation?

13 A. No.

14 Q. You never issued a subpoena to HSBC-India in this case,
09:46 15 right?

16 A. Correct.

17 Q. You just subpoenaed HSBC; is that right?

18 A. I'm not sure what the exact language was, but HSBC in the
19 United States I know.

09:47 20 Q. And these documents that have been admitted in evidence are
21 what you received from the United States, correct?

22 A. Yes.

23 Q. And you never pursued any other form of investigation in
24 India, correct?

09:47 25 A. Correct.

1 Q. Sir, you gave some testimony this morning -- well, let me
2 ask you this. Let me start with this.

3 Yesterday you told the jury -- I say yesterday --
4 Friday. Friday you told the jury what an FBAR filing is,
09:47 5 correct?

6 A. Correct.

7 Q. And -- so that is a form, right?

8 A. Yes.

9 Q. One page, essentially --

09:48 10 A. Correct.

11 Q. -- that reports certain foreign accounts, correct?

12 A. Correct.

13 Q. You're aware that there's no tax due with an FBAR, right?

14 A. Yes, I am.

09:48 15 Q. So when an FBAR is filed on June 30th of each year to folks
16 who have a reporting obligation, they pay no tax with the filing
17 of the FBAR, right?

18 A. That's correct.

19 Q. You spent some time this morning walking through some
09:48 20 Citibank documents in some detail, and I want to go through
21 those documents with you.

22 We can start with 57.

23 MR. KIRSCH: James, can you call out the top of the
24 page?

09:49 25 BY MR. KIRSCH:

1 Q. Do you see there a date of October 16, 2008?

2 A. Yes, I do.

3 Q. You testified on direct examination -- I can show you the
4 exhibit if you like, but I think you have it in front of you.

09:49 5 You testified on direct examination that that was the same date
6 that the application in defendant's Exhibit 2060 was stamped,
7 correct?

8 A. Correct.

9 MR. KIRSCH: If you go to page DOJ Citi-16, James?

10 BY MR. KIRSCH:

11 Q. Do you see that check?

12 A. Yes, I do.

13 Q. For a million dollars?

14 A. Correct.

09:49 15 Q. Comparing these two documents now that you've just seen,
16 does that indicate to you that the Citibank CDs were purchased
17 around on or about October 16th, 2008?

18 A. Yes.

19 Q. Now, sir, I think you've testified that you've reviewed the
09:50 20 tax returns that were filed in this case.

21 A. Correct.

22 Q. And you reviewed Dr. Ahuja's 2008 and 2009 tax returns,
23 correct?

24 A. Correct.

09:50 25 Q. And you've also received and reviewed the 1099 forms that

1 you subpoenaed from Mr. Miller who testified here on Friday,
2 right?

3 A. Correct.

4 Q. Now, sir --

09:50 5 MR. KIRSCH: James, can you go back to the first page
6 of 57.

7 BY MR. KIRSCH:

8 Q. From your review of those tax returns and from your review
9 of the 1099 forms that Mr. Miller received, you know that the
09:51 10 income that was received on these Citibank CDs was reported on
11 Schedule B, correct?

12 A. Correct.

13 Q. The income was there for the IRS to see it, right?

14 A. Yes.

09:51 15 Q. There's -- you don't dispute that the tax was calculated
16 correctly, do you?

17 A. No.

18 Q. And you don't dispute that tax was paid on these Citibank
19 accounts, correct?

09:51 20 A. Correct.

21 Q. I think you testified on direct examination that the
22 documents reflect that the accounts were applied for in
23 New York, correct?

24 A. Yes.

09:52 25 Q. And that's the exact same thing that's reflected in

1 Government Exhibit 42, which deals with HSBC, the last page,
2 correct? I can show that to you if you'd like.

3 A. No. I'll take your word for it, that's correct.

09:52 4 Q. Do you remember I showed it to you and it was stamped HSBC
5 Bank-USA --

6 A. I do.

7 Q. -- N.A. --

8 A. Yes.

9 Q. -- South Asian Banking, New York, New York.

09:52 10 A. Yes.

11 Q. I think you testified, sir, that of the Citibank, the two
12 applications that you showed the jury, either one or both of the
13 accounts were NRO accounts, correct?

14 A. I remember that, yes.

09:52 15 Q. And NRO is the type of account that was taxable in India; is
16 that right?

17 A. Correct.

18 MR. KIRSCH: Your Honor, can I have one minute? I
19 need to look at an exhibit that's at my table.

09:53 20 THE COURT: Surely.

21 (Brief pause.)

22 MR. KIRSCH: Thank you, Your Honor.

23 BY MR. KIRSCH:

09:54 24 Q. Sir, I have what I need. Sir, I want to ask you some
25 questions about the screen shots that are in evidence as

1 Government's Exhibit 69 and 71. Do you have those in front of
2 you, sir?

3 A. I do, yes.

4 Q. Now, sir, you have no personal knowledge or direct knowledge
09:55 5 of how those records were created, correct?

6 A. Correct.

7 Q. You have no personal knowledge or direct knowledge of when
8 they were created, right?

9 A. Aside from the date on top of them.

09:55 10 Q. Yeah, you can just read the screen shot, right?

11 A. Correct.

12 Q. But you don't know if that was actually the date the screen
13 shot was produced or if that reflects the account or the value
14 of a CD on a particular date, do you?

09:56 15 A. Based on Ms. Katju's testimony, I believe and know this to
16 be date that the screen shot was taken.

17 Q. But that's what you have to rely on, correct?

18 A. Correct.

19 Q. You heard Ms. Katju's testimony that she didn't know whether
09:56 20 these screen shots were accurate.

21 A. No, I didn't hear that.

22 Q. You didn't hear that testimony?

23 A. I don't believe that was what I remember from Ms. Katju's
24 testimony.

09:56 25 Q. Okay. Well, we have -- well, you don't know whether the

1 screen shots are accurate, right?

2 A. You know, I have corroborating evidence from screen shots
3 tied to other transactions that make me believe they're very
4 accurate.

09:56 5 Q. But, sir, you've made mistakes with respect to the screen
6 shot calculations in this case, have you not?

7 A. Yes.

8 Q. And some of those mistakes were due to inaccurate
9 information contained in the screen shots, correct?

09:56 10 A. Incorrect.

11 Q. That's not correct?

12 A. That's not correct.

13 Q. Sir, you were asked on direct examination, do you remember,
14 by Ms. Siskind, if there were any errors in your calculations
09:57 15 that you would correct them, correct?

16 A. Yes.

17 Q. And you said you would because you're familiar with e-mails,
18 are you not, where accounts or CD numbers were changed on the
19 screen shots, correct?

09:57 20 A. Yes, correct.

21 Q. And interest rates were changed, correct?

22 A. Correct.

23 Q. And the amounts in the CDs were changed, correct?

24 A. Yes.

09:57 25 Q. And this was a result of e-mails that you reviewed and that

1 you obtained from HSBC in New York, correct?

2 A. Correct.

3 Q. Indicating that some of the information in some of those
4 screen shots did not reflect accurately what was happening with
09:58 5 some of the CDs, correct?

6 A. Well, it depends on what you mean by "happening with some of
7 the CDs."

8 Q. Well, sir, let me --

9 MR. KIRSCH: Your Honor, may I approach?

09:58 10 THE COURT: You may.

11 BY MR. KIRSCH:

12 Q. Let me show you an e-mail, sir, that's Bates-stamped
13 HSBC-NRI 893, from Priti Dhanani's --

14 THE COURT: Please do not walk and talk.

09:58 15 MR. KIRSCH: Sorry, I forgot.

16 BY MR. KIRSCH:

17 Q. Sir, will you read that e-mail? Just read it to yourself.

18 A. Okay.

19 (Witness peruses document.)

09:58 20 A. Okay.

21 BY MR. KIRSCH:

22 Q. Now, do you have that?

23 A. Yes, I do.

24 Q. So now does that remind you that there was some information
09:59 25 contained in these screen shots that did not accurately reflect

1 the information in the CDs?

2 A. In the CDs, I'm not sure. But the screen shots accurately
3 reflected the information that was in the system.

4 Q. Sir, what you're telling the jury is that the screen shot is
09:59 5 an accurate picture of the computer as the computer existed on a
6 particular day, right?

7 A. That's correct.

8 Q. But the information in the computer on a particular day may
9 have in instances been inaccurate, correct?

09:59 10 A. Yes. Correct.

11 Q. Just so we're clear, that's what these documents reflect,
12 correct?

13 A. Correct.

14 Q. So you would agree with me --

09:59 15 THE COURT: Rephrase.

16 MR. KIRSCH: I'm sorry, Your Honor.

17 BY MR. KIRSCH:

18 Q. Sir, the information contained in the screen shots -- not
19 just the picture itself, the information contained in the screen
10:00 20 shots -- you have evidence that suggests that that information
21 was not always accurate, correct?

22 A. No more or less accurate than any other bank.

23 Q. Well, sir, I'm not asking about any other bank. You've
24 reviewed screen shots from other banks and tested them for
10:00 25 accuracy in the course of this investigation?

1 A. Of course not.

2 Q. Okay. So you have personal knowledge of your own bank
3 messing up screen shots?

4 A. Not screen shots. But of course, everyone's had an
10:00 5 experience where the bank doesn't get a deposit perfectly
6 correct and you have to follow up.

7 Q. You've had that experience where bank statements have been
8 wrong?

9 A. Not necessarily a bank statement but something coming back.
10:00 10 I think almost everyone has.

11 Q. Let's focus on the screen shots in this case. I'll ask my
12 question again.

13 A. Okay.

14 Q. Do you agree with me --

10:00 15 THE COURT: No, he doesn't have to agree with you.

16 MR. KIRSCH: I'm sorry, Your Honor. It's a bad habit.
17 You're going to break it, though.

18 THE COURT: You're right.

19 (General laughter.)

10:01 20 BY MR. KIRSCH:

21 Q. Sir, the screen shot that you have in front of you as
22 Government Exhibit 69 and 71 do not always accurately reflect
23 the information with respect to the CDs reflected in those
24 screen shots, correct?

10:01 25 A. Yes.

1 Q. But you relied on them in performing your calculations for
2 this jury, correct?

3 A. Yes.

4 Q. Despite the fact that you know that they contain inaccurate
5 information.

6 A. Correct.

7 MR. KIRSCH: Your Honor, may I approach?

8 THE COURT: You certainly may.

9 MR. KIRSCH: Your Honor, may I have just one minute?

10 (Defense counsel confer.)

11 BY MR. KIRSCH:

12 Q. Sir, you were asked about the amended returns in this case,
13 correct?

14 A. Yes.

15 Q. And those -- by the way, you have no -- the amended returns
16 are accurate as far as you know, correct?

17 A. Yes.

18 Q. And you've checked. You checked the amended returns, right?
19 You're familiar with them.

20 A. Yes.

21 Q. Sir, those amended returns were paid -- I'm sorry -- they
22 were filed before Dr. Ahuja was indicted in this case, correct?

23 A. Correct.

24 Q. And with those amended returns he paid late-payment
25 penalties, correct?

1 A. Correct.

2 Q. And he also paid interest on the underpayment amount,
3 correct?

4 A. Yes.

10:03 5 Q. All paid at the same time, correct?

6 A. Yes.

7 Q. And actually, they were paid -- the payments were made in
8 March, I believe, correct?

9 A. I don't have direct knowledge of that, but --

10:03 10 Q. In any event, the amended tax returns were filed before
11 Dr. Ahuja was indicted in this case, correct?

12 A. Correct.

13 MR. KIRSCH: Your Honor, I have no further questions.

14 REDIRECT EXAMINATION

10:03 15 BY MS. SISKIND:

16 Q. Now, Agent Cook, Mr. Kirsch was asking you about bank
17 statements at the beginning of his cross-examination. Do you
18 recall that?

19 A. Yes, I do.

10:04 20 Q. Just so we're clear, what, if any, monthly bank statements
21 were you able to review regarding HSBC?

22 A. The HSBC-USA account for a certain period, I believe it
23 ended in 2008, but I had monthly statements for that Premier
24 account in the United States.

10:04 25 Q. And are those monthly account statements what we talked

1 about on Friday in Government Exhibit 72?

2 A. Yes.

3 Q. Were you able to review any monthly account statements for
4 any HSBC-India accounts?

10:04 5 A. No, I was not.

6 Q. Were you able to review any monthly account statements for
7 any HSBC-Jersey accounts?

8 A. No.

9 Q. And do you have Exhibit 72 with you?

10:04 10 A. Yes, I do.

11 Q. What are the last four digits of the account number that
12 these monthly statements pertain to?

13 A. 244-8.

14 Q. I want to take you -- first let me ask you this. In your
10:05 15 investigation did you receive documents from Citibank?

16 A. Yes, I did.

17 Q. Mr. Kirsch was asking you about this. And just to be clear,
18 where did the record come from for Citibank?

19 A. United States.

10:05 20 Q. And by looking at a document can you tell whether it came
21 from Citibank?

22 A. Yes, I can.

23 Q. And what about a document and the Bates number in particular
24 indicates that it came from Citibank?

10:05 25 A. It will have a notification such as DOJ-CITI.

1 Q. Now, Mr. Kirsch was asking you about some letters and where
2 the letters were addressed. Do you recall that?

3 A. Yes, I do.

4 Q. I want to take you through a couple letters that we already
10:05 5 talked about but just go through them quickly, starting with
6 Government Exhibit 32.

7 MS. SISKIND: If we could switch over to the
8 government computer, Your Honor.

9 BY MS. SISKIND:

10:05 10 Q. To whom is this letter addressed?

11 A. Premier department, HSBC-Jersey.

12 Q. Do you see an account number or -- I'm sorry -- a credit
13 card number referenced in this letter?

14 A. Yes, I do.

10:06 15 Q. Does that number correspond in any way to the number on the
16 HSBC-United States account statements? The number that you just
17 read to the jury.

18 A. No, it does not.

19 Q. And what names appear below the signatures on this letter to
10:06 20 HSBC-Jersey?

21 A. Arvind Ahuja, Namrata Ahuja.

22 Q. Government Exhibit 59. You can look at it on the screen.
23 To whom is this letter addressed?

24 A. The branch manager at HSBC-Jersey.

10:06 25 Q. Do you see names typed next to the signatures?

1 A. Yes, I do.

2 Q. What names are those?

3 A. Namrata Ahuja, Arvind Ahuja.

4 Q. Do you see an account number in the body of this letter?

10:06 5 A. Yes, I do.

6 Q. Is that the defendant's HSBC-United States account number?

7 A. No, it is not.

8 Q. Government Exhibit 62. Who is that letter -- to whom is
9 that letter addressed?

10:07 10 A. The manager, HSBC-Jersey.

11 Q. And do you see names typed below the signatures?

12 A. Yes, I do.

13 Q. What names are those?

14 A. Arvind Ahuja, Namrata Ahuja.

10:07 15 Q. Do you see both an account number and a customer ID number
16 referenced in the subject line of this letter?

17 A. Yes, I do.

18 Q. Are either of those the defendant's HSBC-United States
19 account number?

10:07 20 A. No.

21 Q. Government Exhibit 5.

22 MR. KIRSCH: Your Honor, I'm going to object as
23 repetitive of the direct examination.

24 THE COURT: Overruled.

10:07 25 BY MS. SISKIND:

1 Q. To whom is this letter addressed?

2 A. The manager, HSBC-New Delhi.

3 Q. Do you see a name below the signature?

4 A. I do.

10:07 5 Q. What name is that?

6 A. Dr. Arvind Ahuja.

7 Q. Do you see an account number in the body of this letter?

8 A. Yes.

9 Q. Is that the defendant's HSBC-United States account number?

10:07 10 A. No, it is not.

11 Q. Government Exhibit 2. To whom is this letter addressed?

12 A. The manager, HSBC-Delhi.

13 Q. What name is typed below the signature?

14 A. Dr. Arvind Ahuja.

10:08 15 Q. Do you see an account number in there?

16 A. Yes, I do.

17 Q. Is that the defendant's HSBC-United States account number
18 that we saw in Exhibit 72?

19 A. No, it is not.

10:08 20 Q. Government Exhibit 85. To whom is this letter addressed?

21 A. The manager, HSBC-New Delhi.

22 Q. Do you see a name typed below the signature?

23 A. Yes, I do.

24 Q. And what name is that?

10:08 25 A. Arvind Ahuja.

1 Q. Do you see an account number in the subject line?

2 A. Yes, I do.

3 Q. Is that the defendant's HSBC-United States account number?

4 A. No, it is not.

10:08 5 Q. Were any of these letters signed by Priti Dhanani?

6 A. No.

7 Q. Were any of them signed by Ankush Tandon?

8 A. No.

9 Q. Were any of the letters you reviewed relating to the
10:08 10 defendant's account signed by Priti Dhanani?

11 A. No.

12 Q. Were any of them signed by Ankush Tandon?

13 A. No.

14 Q. Did any of the letters relating to the defendant's
10:09 15 HSBC-India or HSBC-Jersey account reference that New York
16 account number we saw in Exhibit 72?

17 A. Yes.

18 Q. And which letter was that?

19 A. I'm sorry. Can you repeat that?

10:09 20 Q. Sure. Any of the letters relating to the management of the
21 defendant's HSBC-India or HSBC-Jersey accounts, did any of them
22 reference the account number we saw in Government Exhibit 72?

23 A. Yes.

24 Q. And what letter was that?

10:09 25 A. To transfer funds.

1 Q. From where to where?

2 A. USA to India.

3 Q. Now, Mr. Kirsch was asking you about the account application
4 in Government Exhibit 42.

10:09 5 MS. SISKIND: If we could have that on the screen?

6 BY MS. SISKIND:

7 Q. And he was asking you about a stamp on one of the pages
8 indicating it had been received in New York. Do you recall
9 that?

10:09 10 A. Yes, I do.

11 Q. Can you go to the top of that page and read what it says at
12 the top of the page?

13 A. "Please open an account at your New Delhi branch as per
14 details below."

10:10 15 Q. And does Exhibit 42 bear signatures?

16 A. Yes, it does.

17 Q. And what names are listed near the signatures?

18 MS. SISKIND: If we could go to the page with the
19 signatures.

20 BY MS. SISKIND:

21 Q. Are there any names listed near the signatures on that page?

22 A. There are the signatures themselves listed to the first and
23 second applicant.

24 Q. And then if you go back to the first page, do you see the
10:10 25 names of the applicants?

1 A. Yes, I do.

2 Q. And what are the names of the applicants on Government
3 Exhibit 42?

4 A. Arvind Ahuja and Namrata Ahuja.

10:10 5 Q. Now, Mr. Kirsch was asking you about the office of
6 international affairs and treaties and things of that nature.
7 Do you recall that?

8 A. Yes, I do.

9 Q. As an IRS special agent, do you personally have the final
10:10 10 say in what means of evidence gathering are used in a particular
11 criminal tax case?

12 MR. KIRSCH: Objection.

13 THE COURT: Approach.

14 (At side bar on the record.)

10:11 15 THE COURT: What's the objection?

16 MR. KIRSCH: Well, Your Honor, unless she's going to
17 put on evidence as to who made decisions not to pursue letter
18 rogatories and subpoenas, I need to explore this with him and
19 get into the process by which he could have followed had he
10:11 20 known about it. This opens the door to my line of
21 cross-examination. She's now trying to imply that maybe
22 somebody else shut him down in trying to obtain a letters
23 rogatory. And it's improper. He can't say who or who doesn't
24 make final decisions. He can say what he did and what he didn't
10:11 25 do, but that's all he can do.

1 THE COURT: I'll overrule the objection. But I am
2 going to limit you regarding --

3 MS. SISKIND: This is the only question.

4 THE COURT: Okay, because this is redirect it has to
10:12 5 be limited to the scope of the cross. He was limited on his
6 cross-examination; therefore, you can't go very much further.

7 MS. SISKIND: Your Honor, I just want to make it
8 clear.

9 THE COURT: All right.

10:12 10 MR. KIRSCH: Then I'm going to ask questions about
11 that and whether letters rogatory or subpoenas were pursued in
12 this case and who made the decisions.

13 THE COURT: You already asked him questions about
14 that. I'm not going to allow that.

10:12 15 MR. KIRSCH: But --

16 THE COURT: If you have rebuttal, rebuttal has to be
17 related to her -- I'm sorry -- it has to be related to her
18 redirect, and her redirect at this point in time is limited only
19 to whether or not he had the final say.

10:12 20 MR. KIRSCH: Okay.

21 (End of discussion at side bar.)

22 THE COURT: Overruled.

23 MS. SISKIND: Your Honor, I'm just waiting for the
24 juror to return from getting a drink of water.

10:13 25 THE COURT: Okay.

1 BY MS. SISKIND:

2 Q. So, Agent Cook, I'll ask you that question again.

3 As an IRS special agent, do you personally have the
4 final say in what types of evidence gathering are used in any
10:13 5 given criminal tax case?

6 A. No.

7 Q. I want you to take a look at Government Exhibit 57.

8 Mr. Kirsch was asking you about that. You can look at it on the
9 screen.

10:13 10 What is the written in the upper left-hand corner of
11 this document?

12 A. "Citibank NRI Business, Wealth Management For the Global
13 Indian."

14 Q. Looking at Defendant Exhibit 2060, which we don't have in
10:14 15 the computer but you had in front of you during your direct
16 examination.

17 THE COURT: Do you want to display it?

18 MS. SISKIND: Actually, that would be -- you know,
19 I'll come back to this and we'll do the Elmo last and I'll do
10:14 20 something else first.

21 THE COURT: I can put the camera on it if you want it.

22 MS. SISKIND: Okay.

23 THE WITNESS: It's right here.

24 BY MS. SISKIND:

10:14 25 Q. What does it say in the upper left-hand corner of this

1 document?

2 A. "Citibank NRI Business, Wealth Management For the Global
3 Indian."

4 Q. What type of account application is this?

10:14 5 A. Rupee checking/savings account.

6 Q. If you go to the third page, Mr. Kirsch I believe was asking
7 you if this account was applied for in New York. Do you recall
8 that?

9 A. Yes, I do.

10:15 10 Q. And what is your understanding of where this account was
11 applied for?

12 MR. KIRSCH: Your Honor, objection. Foundation.

13 THE COURT: Objection sustained.

14 BY MS. SISKIND:

10:15 15 Q. If you look at the bottom of the fifth page of this exhibit,
16 do you see two little X marks underneath the picture in the
17 bottom half of the page?

18 A. Yes, I do.

19 Q. Can you read what appears next to those X's?

10:15 20 THE COURT: Would you move that up, please? Move that
21 away from you.

22 BY MS. SISKIND:

23 Q. What appears next to those X's?

24 A. "The customer has been met in person and the documents have
10:15 25 been verified against the originals." "The customer has been

1 met in person and he/she signed the application in my presence."

2 Q. And then looking to the right of that, do you see the stamp
3 that Mr. Kirsch was asking you about?

4 A. Yes, I do.

10:16 5 Q. And at what location would the application have been signed?

6 A. New York.

7 Q. I want you to flip back, though, to the third page of this
8 exhibit. Focusing on Section C at the top of the page, what is
9 Section C? What kind of information is it asking for?

10:16 10 A. The city in which you want to hold the account.

11 Q. And what is checked?

12 A. New Delhi.

13 Q. Now, Mr. Kirsch was asking you about the screen shots in
14 this case. Do you recall that?

10:16 15 A. Yes, I do.

16 Q. He was asking you about an e-mail that ended in the Bates
17 Number 893. Do you recall that?

18 A. I do, yes.

19 Q. What did that e-mail indicate regarding interest rates?

10:17 20 A. That the interest rate on the system was too low.

21 Q. And what, if anything, based on your review of that e-mail,
22 did the bank do after learning the interest rates were too low?

23 A. They corrected it.

24 Q. Was there any change in CD numbers as a result of the change
10:17 25 in interest rate?

1 A. Yes.

2 Q. Did you take that e-mail into account when reaching your
3 computations of interest income in this case?

4 A. Yes, I did.

10:17 5 Q. How did that e-mail affect your computation of interest
6 income?

7 A. Well, it reduced it.

8 Q. Reduced it in what way?

9 A. The interest income -- oh, I pulled the account out. I had
10:17 10 originally included the account that was earning that interest,
11 and I pulled it after that.

12 Q. And so the e-mail that Mr. Kirsch was asking you about, the
13 CDs referenced in there are no longer part of your calculations?

14 A. That's correct.

10:18 15 Q. And overall, what was the change in your interest income
16 calculation from your original calculation to the one we looked
17 at in court today? You can take a look at them if you'd like.

18 (Witness peruses document.)

19 A. On the original one that I had, it was \$1,226,206. And then
10:18 20 on the current one, it's \$1,225,504. It's less than a thousand
21 dollars difference.

22 BY MS. SISKIND:

23 Q. The interest income figures from the defendant's amended tax
24 returns, are those lower or higher than the interest number you
10:18 25 came up with?

1 A. Higher.

2 MS. SISKIND: I have no further questions.

3 RECROSS-EXAMINATION

4 BY MR. KIRSCH:

10:19 5 Q. Sir, on redirect examination Ms. Siskind asked you some
6 questions about the Citibank accounts. Do you recall that?

7 A. Yes, I do.

8 Q. Just so it's clear, sir, the interest from those accounts,
9 the interest income from those Citibank CDs was reported on
10:19 10 Schedule B and tax was paid on that amount, correct?

11 A. That's correct.

12 Q. Ms. Siskind asked you just now about the screen shots and
13 asked you whether the e-mail that I showed you reduced the
14 computation of the interest income, and you testified that it
10:19 15 did, right?

16 A. Correct.

17 Q. So, sir, when you discovered that some of the information
18 was inaccurate on those screen shots, it actually affected your
19 computations in this case, right?

10:20 20 A. Correct.

21 Q. Ms. Siskind asked you some questions about whether you make
22 final decisions with respect to investigations.

23 A. Correct.

24 Q. Do you recall that? Sir, do you know whether an IRS
10:20 25 superior ever made a decision not to issue a subpoena to HSBC in

1 India or not to pursue a letters rogatory? I'm just asking you
2 if you know.

3 A. No.

4 Q. Do you know whether the prosecutors at this table ever made
10:20 5 a decision not to issue a subpoena to HSBC-India or pursue a
6 letters rogatory in this investigation?

7 A. No.

8 Q. Sir, Ms. Siskind walked through a bunch of letters with you,
9 and I'm not going to show you those letters again; we've seen
10:21 10 them numerous times throughout the course of this trial.

11 But, sir, you don't know who wrote those letters, do
12 you?

13 A. Correct.

14 Q. You don't know who addressed those letters, correct?

10:21 15 A. Correct.

16 Q. And you have no idea why some of those letters are addressed
17 to HSBC-USA and others are addressed to HSBC branches in
18 New Delhi and Jersey, correct?

19 A. Well, I know why they're addressed that way.

10:21 20 Q. You know why they're addressed that way?

21 A. Correct.

22 Q. Was that based on something that somebody told you?

23 A. Well, that's where they were going.

24 Q. Sir, you don't -- you received all of the documents in this
10:21 25 case from HSBC-USA, correct?

1 A. Correct.

2 Q. You have no direct knowledge that any document ever went to
3 India because you didn't receive any document from India,
4 correct?

10:21 5 A. Correct.

6 Q. So those letters that are addressed to HSBC-USA, you don't
7 know why they were addressed to HSBC-USA, do you?

8 A. Well, I do know why they were addressed to HSBC-USA.

9 Q. You do. Okay.

10:22 10 Did you write the letters, sir?

11 A. No, I did not.

12 Q. Sir, I'd like to show you Government's Exhibit 82.

13 MR. KIRSCH: Is it on the correct system, James? Can
14 you pull it up?

10:23 15 MR. HERRITY: We need to change over.

16 MR. KIRSCH: Your Honor, can you switch to the
17 defense?

18 BY MR. KIRSCH:

19 Q. Do you see that letter, sir?

10:23 20 A. Yes, I do.

21 Q. Do you see it says "The Manager, HSBC-NRI Services, USA"?

22 A. Yes, I do.

23 Q. Did you address this letter?

24 A. No, I did not.

10:23 25 Q. Do you know who addressed it?

1 A. No.

2 Q. Do you know where this letter was received?

3 A. Ultimately?

4 Q. Yes.

10:23 5 A. No.

6 Q. Where did you get it?

7 A. From HSBC.

8 Q. USA, right?

9 A. Correct.

10:23 10 Q. And do you see a stamp on there that says "Original
11 Sighted"? Do you see that?

12 A. Yes, I do.

13 Q. Sir, you have no direct evidence whatsoever that this letter
14 ever went anywhere outside of the United States, do you?

10:23 15 A. Correct.

16 Q. And you know why this letter was addressed to HSBC-USA?

17 A. No.

18 Q. But that's what you just told this jury is you knew why
19 these letters were addressed to whom they were addressed to,
10:24 20 right?

21 A. Correct.

22 Q. But you have no idea why these letters were addressed --
23 Strike that.

24 You don't know -- the one letter I showed you, sir,
10:24 25 you don't know why it was addressed to HSBC-NRI Services USA,

1 right?

2 A. Correct.

3 Q. So do you want to take back that prior answer?

10:24 4 A. No. I think in the beginning you had asked me do you know
5 why the letters are addressed to why they are. And I answered
6 in general terms, yes, I do know why the letters are addressed
7 why they are. If you pull out each individual letter and ask me
8 follow-up questions on each individual address, then certainly I
9 can't give you specific information on why they were addressed
10 there.

11 Q. Because you don't know why this letter was addressed to
12 HSBC-NRI Services, USA, correct?

13 A. Correct.

14 MR. KIRSCH: Your Honor, may I have just one minute?
10:24 15 (Defense counsel confer.)

16 MR. KIRSCH: No further questions, Your Honor.

17 MS. SISKIND: Your Honor, can I ask one follow-up
18 question? Actually only one.

19 THE COURT: I'm counting.

10:25 20 FURTHER REDIRECT EXAMINATION

21 BY MS. SISKIND:

22 Q. Agent Cook, was the HSBC-NRI Services representative office
23 located in the United States?

24 A. Yes, it was.

10:25 25 MS. SISKIND: No further questions.

1 THE COURT: Does the jury have questions of the
2 witness? If so you may submit them to the bailiff.

3 (Jury questions tendered to the Court.)

4 THE COURT: Approach.

10:26 5 (At side bar on the record.)

6 (Discussion off the record.)

7 MR. KIRSCH: I think 3 is a proper question: In your
8 investigation were you able to confirm whether or not he
9 received 1099 forms?

10:28 10 THE COURT: Does the government agree regarding 3?

11 MS. SISKIND: That's fine.

12 THE COURT: Mr. Kirsch again.

13 MR. KIRSCH: Your Honor, I think that I have this one
14 page with four questions on it. I think Question 3 is a
10:28 15 two-part question. I think both parts can be asked, and I think
16 that -- I think that Question 4 can be asked. They can see that
17 from the tax returns, but they can ask Agent Cook. I don't know
18 if Question Number 2 is appropriate: What prompted an
19 investigation?

10:28 20 THE COURT: I will not read Question 2.

21 MR. KIRSCH: And I don't know if Question 1 is
22 appropriate either.

23 THE COURT: I will not read Question 1.

24 MR. KIRSCH: That takes care of that one. And I think
10:28 25 on this one, I think in this one, Your Honor, there's --

1 THE COURT: Read the question, please.

2 MR. KIRSCH: The question is: When the defendant
3 submitted amended tax returns for 2005 to 2009, did he include
4 any 1099 forms from his HSBC-India or Jersey accounts?

10:29 5 What I would suggest, Your Honor, is that the question
6 be modified to ask Agent Cook is: When a tax return is
7 submitted to the IRS, does the taxpayer submit 1099 forms with
8 the return?

9 THE COURT: Does the government agree?

10:29 10 MS. SISKIND: Yes, Your Honor.

11 THE COURT: That is how I will ask it.

12 MR. KIRSCH: Thank you, Your Honor.

13 THE COURT: Does the government have any disagreement
14 with what the defense stated?

10:29 15 MS. SISKIND: No, Your Honor.

16 THE COURT: All right. So for clarification of the
17 questions submitted by the jury, the Court will ask Question 3.
18 The Court will not ask about the scope of the investigation,
19 which is Question 1. The Court will not ask about what prompted
10:30 20 the investigation, which is Question 2. The Court will not ask
21 Question 4, which inquires whether Dr. Ahuja applied for a
22 foreign tax credit for 2002 to 2009.

23 MR. KIRSCH: Your Honor, I thought we agreed 4 should
24 be asked.

10:30 25 MS. SISKIND: I think you indicated, Mr. Kirsch --

1 MR. KIRSCH: I don't think that's an improper
2 question. He's going to say yes.

3 MS. SISKIND: That's fine.

4 THE COURT: All right. So I will ask -- I will read
10:31 5 Question 3 and Question 4, and I will also modify Question 5 to
6 inquire whether taxpayers submit -- are to submit 1099 forms
7 with amended tax returns. Is that agreed?

8 MR. KIRSCH: Yes, Your Honor.

9 MS. SISKIND: Yes, Your Honor.

10:31 10 THE COURT: Very well.

11 (End of discussion at side bar.)

12 JURY EXAMINATION

13 BY THE COURT:

14 Q. Agent Cook, in your investigation were you ever able to
10:31 15 confirm whether or not Dr. Ahuja received 1099-INT forms from
16 HSBC for NRI India accounts?

17 A. Yes, I was.

18 Q. Were you able to confirm whether or not he received such
19 forms from a Jersey account?

10:32 20 A. Yes, I was.

21 Q. Do you know whether Dr. Ahuja ever applied for a foreign tax
22 credit from 2002 to 2009?

23 A. Yes, I do.

24 Q. When taxpayers submit amended tax returns, do they
10:32 25 ordinarily include 1099 forms?

1 A. I'm uncertain.

2 THE COURT: The parties may follow up.

3 FURTHER REDIRECT EXAMINATION

4 BY MS. SISKIND:

10:33 5 Q. Agent Cook, the Court asked you whether you were able to
6 determine if the defendant received Forms 1099 from NRI Services
7 or Jersey. Did he receive Forms 1099 from either HSBC-India or
8 HSBC-Jersey?

9 A. No.

10:33 10 MS. SISKIND: No further questions.

11 MR. KIRSCH: I have no questions, Your Honor.

12 THE COURT: Members of the jury, we will take our
13 break at this time.

14 As I said earlier, the Court makes decisions as to
10:33 15 whether certain questions submitted by the jury will be read,
16 and the Court exercised its responsibility in that regard and
17 only asked certain questions that were submitted.

18 We will take a recess. As usual, please do not
19 discuss the case.

10:33 20 THE BAILIFF: All rise.

21 (Jury out at 10:34 a.m.)

22 THE COURT: You may step back.

23 (Witness excused at 10:34 a.m.)

24 THE COURT: Please be seated.

10:34 25 Has the government prepared a witness?

1 MS. SISKIND: No, Your Honor. The only remaining
2 evidentiary issue are the two stipulations we submitted to the
3 Court. I propose reading those when the jury returns. Then
4 subject to a verification that all of our exhibits that we think
10:34 5 were admitted, were actually admitted, the government will rest.

6 THE COURT: All right. What we will do is give the
7 parties a chance to go over the exhibits with the clerk and to
8 make sure that they are all accounted for. We'll do that before
9 the jury comes back. All right?

10:35 10 MS. SISKIND: Thank you, Your Honor.

11 THE COURT: But also before the jury comes back and
12 the stipulations are read, I will entertain any comments the
13 parties may wish to make. All right?

14 MS. SISKIND: Your Honor, on the stipulations can I
10:35 15 retrieve them from the Court so I can read them, the signed
16 versions to the jury?

17 THE COURT: Absolutely.

18 MS. SISKIND: Thank you, Your Honor.

19 (Recess taken at 10:35 a.m., until 10:57 a.m.)

10:57 20 THE COURT: Be seated, please.

21 We're back on the record.

22 I'd like to first inquire whether the parties had a
23 chance to review the exhibits with the clerk and confirm that
24 all exhibits that you wish to offer have indeed been offered?

10:57 25 MS. SISKIND: Your Honor, we have made that review and

1 all of the exhibits we wish to offer are reflected on the
2 Court's list.

3 THE COURT: All right. Is the defense in agreement?

4 MR. KIRSCH: Yes, Your Honor.

10:57 5 THE COURT: All right. Are there additional matters
6 over and above the need to address the stipulations?

7 MR. KIRSCH: Your Honor, there's just one short
8 matter. In response to the foreign tax credit question, the
9 parties have reached a stipulation that we'd like to read to the
10 jury in lieu of calling Mark Miller and Agent Cook to explain
10:58 11 the foreign tax credit. I'd like to read this in front of the
12 jury, but can I read it for you first?

13 THE COURT: Sure, go ahead.

14 MR. KIRSCH: This is what I'd like to say: "In
10:58 15 response to the Court's questions read to the witness, the
16 parties stipulate and agree that Dr. Ahuja did take a foreign
17 tax credit, including a foreign tax credit for taxes paid in
18 India on the Citibank CDs. However, he did not take a foreign
19 tax credit for any tax paid to foreign countries on interest
10:58 20 earned on the HSBC CDs."

21 THE COURT: Is that the stipulation the government has
22 entered with the defense?

23 MS. SISKIND: Yes, Your Honor. We would propose one
24 modification. Maybe just to say: "If called as a witness, Mark
10:59 25 Miller would testify that."

1 Frame it in those terms so it's not us saying it, it
2 would have been what a witness would say.

3 MR. KIRSCH: I can add that. So I'll say: "The
4 parties stipulate and agree that if recalled as a witness Mark
10:59 5 Miller would testify that Dr. Ahuja did take a foreign tax," and
6 I'll read the rest of the paragraph.

7 THE COURT: All right. Are you ready to proceed?

8 MR. WEBB: Your Honor, let me raise just one issue.

9 THE COURT: Please stay in front of a mic.

11:00 10 MR. WEBB: Yes, Your Honor.

11 Logistically when the jury comes back in then the
12 government -- we'll read this stipulation that Mr. Kirsch just
13 read off, the government has two short administrations to read,
14 and then the government rests, as I understand it. Is that
11:00 15 correct?

16 THE COURT: That is my understanding.

17 MR. WEBB: And then we have prepared a written Rule 29
18 motion for judgment of acquittal on a variety of issues.

19 THE COURT: You may tender that at this point, if
11:00 20 you'd like.

21 MR. WEBB: And we can do so. And then just to explain
22 to Your Honor exactly, we had made a decision over the weekend
23 that we will not be calling Dr. Ahuja and we will not be calling
24 therefore character witnesses to testify.

11:01 25 We will be calling one witness that will not be a

1 particularly long witness who is a former agent of the IRS who
2 is being called for two purposes: One is to explain how to get
3 evidence in a foreign country; and also there's some golf course
4 records that he's going to summarize for the jury that the
11:01 5 government had said they don't have any objection to that we
6 obtained from Pebble Beach over the weekend.

7 But then we will be resting our case shortly after
8 that witness testifies.

9 And just as far as schedule for the day, we talked to
11:01 10 the government over the weekend. I'll speak on behalf of both
11 of us but the government can correct me if I'm wrong, that in
12 order for us to make sure that we've got all the exhibits lined
13 up that would go back to the jury -- also in order to be able to
14 try to ask for time for some oral argument on the Rule 29
11:01 15 motion, and to try to work out some -- we've got some issues on
16 instructions that I think we might be able to work out before we
17 have an instruction conference with Your Honor, that we, the
18 parties, would like to request that we engage in all those
19 activities this afternoon and that we do closing arguments
11:02 20 starting first thing tomorrow morning, if that's acceptable to
21 the Court.

22 THE COURT: That's acceptable to the court.

23 MR. WEBB: Thank you.

24 MR. SULLIVAN: Thank you, Your Honor.

11:02 25 THE COURT: The jury will thank you as well.

1 All right. Please bring out the jury.

2 (Jury in at 11:03 a.m.)

3 THE COURT: Mr. Kirsch?

4 MR. KIRSCH: Your Honor, the parties have reached a
11:03 5 stipulation which I would like to read to the jury.

6 STIPULATIONS BETWEEN THE PARTIES

7 MR. KIRSCH: In response to the Court's questions read
8 to the witness, the parties stipulate and agree that if recalled
9 as a witness Mark Miller would testify that Dr. Ahuja took a
11:03 10 foreign tax credit, including a foreign tax credit for taxes
11 paid in India on the Citibank CDs; however, he did not take a
12 foreign tax credit for any tax paid to foreign countries on
13 interest earned on the HSBC CDs.

14 Thank you, Your Honor.

11:04 15 THE COURT: Proceed.

16 MS. SISKIND: And I have two additional stipulations
17 to read to you. The first: United States of America, through
18 its undersigned attorneys, and the defendant, through his
19 undersigned attorneys, hereby agree and stipulate that
11:04 20 Government Exhibits 12-15 and Defendant's Exhibits 2224-2227 are
21 the defendant's U.S. individual income tax returns, Forms 1040,
22 for the calendar years 2002-2009, and Defendant's Exhibits
23 2084-2091 are the defendant's amended U.S. individual income tax
24 returns, Forms 1040X, for the calendar years 2002-2009, all of
11:05 25 which were filed by the defendant and received by the Internal

1 Revenue Service.

2 The second stipulation: The United States of America,
3 through its undersigned attorneys, and the defendant, through
4 his undersigned attorneys, hereby agree and stipulate to the
11:05 5 following factual and evidentiary matters:

6 If called at trial, a witness from the United States
7 Department of Treasury, Financial Crimes Enforcement Network,
8 would testify as follows:

9 A report of foreign bank and financial accounts is
11:05 10 commonly referred to as an FBAR.

11 FBARs are due on June 30th following the close of the
12 calendar year.

13 A search of the records maintained by the United
14 States Department of Treasury indicates that no FBARs were filed
11:05 15 by the defendant, Arvind Ahuja, or his wife for the calendar
16 years 2006-2009.

17 THE COURT: Members of the jury, just for
18 clarification, evidence is testimony of witnesses given in court
19 both on direct and cross-examination, regardless of who calls a
11:06 20 witness; exhibits received into the trial; and as was just
21 noted, stipulations. Any facts to which the parties agree or
22 stipulate must therefore be treated as evidence in the case.

23 Does the government have anything else at this time?

24 MR. SULLIVAN: Nothing further, Your Honor.

11:06 25 At this time, the government rests its case.

1 THE COURT: Very well.

2 Members of the jury, that will complete the evidence
3 that you will hear today.

4 MR. WEBB: Your Honor, could we be briefly heard at
11:06 5 side bar?

6 THE COURT: Yes.

7 (At side bar on the record.)

8 MR. WEBB: Your Honor, our -- we have a witness here
9 that's come in.

11:07 10 THE COURT: Oh, that's right. Okay.

11 MR. WEBB: Could I file the Rule 29 motion, you would
12 accept it, enter and continue it for argument. And I'm not
13 making any waiver by putting one witness on the stand.

14 THE COURT: No. You have submitted the motion. I
11:07 15 take the motion under advisement.

16 MR. WEBB: Thank you. And I'll proceed with a witness
17 and then we'll be done for the day.

18 THE COURT: The record will reflect the submission of
19 the motion. But just for clarity, this does confirm that the
11:07 20 Rule 29 motion may be made before the offer of any evidence by
21 if defense.

22 MR. WEBB: We're not waiving anything by going forward
23 with a witness.

24 THE COURT: Absolutely not. And we will also have a
11:08 25 colloquy with your client respecting his right to testify.

1 MR. WEBB: I do understand that.

2 (End of discussion at side bar.)

3 THE COURT: I got ahead of myself. There is one
4 witness who will be called at this time.

11:08 5 Mr. Webb?

6 MR. WEBB: Yes, Your Honor. In light of the
7 government's resting its case, we have a witness who is here
8 from out of town, and we would ask the Court's indulgence to
9 call him at this time.

11:08 10 THE COURT: Very well. Proceed.

11 MR. WEBB: He's on his way in at this moment,
12 Your Honor.

13 THE REPORTER: Raise your right hand, please.

14 RONALD BRAVER, DEFENSE WITNESS, SWORN

15 THE REPORTER: Please state your name and spell your
16 name for the record.

17 THE WITNESS: It's Ron Braver, B-R-A-V-E-R.

18 DIRECT EXAMINATION

19 BY MR. WEBB:

11:09 20 Q. Mr. Braver, would you please tell the jury by whom are you
21 currently employed?

22 A. Ron Braver and Associates.

23 Q. And in which city is that business located?

24 A. Chicago.

11:09 25 Q. Please describe the nature of the business of Ron Braver and

1 Associates.

2 A. I perform forensic accounting investigations and dispute
3 services.

4 Q. Now, by whom were you employed before Ron Braver and
5 Associates?

11:09

6 A. I worked for an international accounting firm known as Grant
7 Thornton LLP.

8 Q. And when did you begin your employment at Grant Thornton?

9 A. October 2010.

11:10

10 Q. And you remained employed at Grant Thornton until you set up
11 the business Ron Braver and Associates; is that correct?

12 A. Correct. July of this year.

13 Q. July of this year.

14 A. Correct.

11:10

15 Q. Now, tell the jury, you -- Grant Thornton was in October
16 of 2010?

17 A. Correct.

18 Q. Tell the jury what you did before October 2010.

11:10

19 A. Sure. From October of 1984 through September of 2010 I was
20 an IRS Agent, first as a revenue agent. Beginning in September
21 of 1985 I became a special agent and later a supervisory special
22 agent.

23 Q. So that you had a 25-year career at the Internal Revenue
24 Service; is that correct?

11:10

25 A. That's correct.

1 Q. And in October of 2010 did you then retire from your
2 government service?

3 A. I did.

4 Q. And that's when you entered the private sector.

11:10 5 A. I did.

6 Q. For the last two years or so.

7 A. Correct.

8 Q. Now, why don't you just -- we don't need to get into a lot
9 of detail, but when you are with the IRS, when you were a
10 revenue agent, what are your duties as a revenue agent?

11 A. I was in the employee plans and exempt organization group
12 for 11 months.

13 Q. And you said at some point you became what is known as a
14 special agent of the IRS; is that correct?

11:11 15 A. That's correct.

16 Q. I think that's the same position Mr. Cook -- do you know --
17 Mr. Cook just testified. Do you know Mr. Cook at all?

18 A. I do not.

19 Q. I believe he also is a special agent of the IRS.

11:11 20 When you were a special agent -- you were a special
21 agent of the IRS from when to when, approximately?

22 A. September of 1985 through around January of 2007.

23 Q. And during that 22-year time period, can you just describe
24 for the jury what your duties were, generally what you did. Not
11:11 25 going into specific cases, but generally what do you do as a

1 special agent for the IRS during those 22 years?

2 A. Sure. You investigate allegations of income tax evasion or
3 income tax charges and allegations of money laundering.

4 Q. And where were you assigned during those years?

11:12 5 A. Initially, I was assigned in Dallas. After two years, I was
6 in Chicago.

7 Q. Now, you then said in 2007 through the remainder of your
8 career at the IRS, what was your position or title?

9 A. I was a supervisory special agent.

11:12 10 Q. And what does the supervisory special agent do?

11 A. It supervises special agents.

12 Q. Okay. And where did you work when you were supervising
13 special agents?

14 A. In the Chicago area.

11:12 15 Q. Now, besides the background you just provided to the jury,
16 are you a CPA?

17 A. I am.

18 Q. And do you have other specialties that you're certified for?

19 A. I am. I'm a certified fraud examiner, I'm a certified
11:12 20 anti-money-laundering specialist. That's it.

21 Q. And as far as your educational background is concerned, why
22 don't you summarize it for the jury.

23 A. I have a bachelor of science in accounting and a master's in
24 taxation.

11:13 25 Q. Now, during our trial Agent Cook has told the jury that he

1 was not aware of any way that an IRS agent could obtain evidence
2 in India in connection with an investigation he was conducting.
3 Based on -- factually do you agree or disagree with that
4 testimony?

11:13 5 A. I would disagree.

6 Q. And I want you to tell the jury during the years that you
7 were an IRS special agent, did you frequently obtain evidence in
8 a foreign country?

9 A. I did.

11:13 10 Q. And can you just summarize for the jury the different
11 methods and ways IRS special agents have to obtain evidence in
12 foreign countries if they feel it's necessary on a case?

13 A. Sure. You have your manual, which kind of -- the IRS
14 manual, which lays out different methods that you can use to
11:14 15 obtain evidence. And you have the IRS international section of
16 the criminal investigation that also assists you in helping you
17 obtain records overseas.

18 There's various methods using Interpol, your foreign
19 attaches that are stationed around the country, around the
11:14 20 world, and again the international section. And you use letters
21 of interrogatory. There's various treaties with various
22 countries, and you can do it both informally and formally.

23 Q. Now, you mentioned the terms "letters rogatory"?

24 A. Correct.

11:14 25 Q. I would like you to -- can you explain to the jury what are

1 letters rogatory and how can they be used by a special agent of
2 the IRS to obtain evidence in a foreign country?

3 A. Okay. It's a formal request. You prepare it as an agent,
4 it's reviewed by your supervisor, it goes through the proper
11:15 5 channels to the country in question, and then you can request
6 either testimony or documents or both.

7 Q. And it is a formal process; is that correct?

8 A. Yes.

9 Q. Does it go through a court?

11:15 10 A. It can go through a court or it could go through
11 law-enforcement methods as well, using Interpol or your attaché.

12 Q. So there's two different ways to use letters rogatory to get
13 evidence in foreign countries.

14 A. Correct.

11:15 15 Q. For example -- and you said that you can use the letters
16 rogatory to get both documents in foreign countries and
17 testimony; is that correct?

18 A. Correct.

19 Q. And if you obtain -- if you want to obtain testimony in a
11:16 20 foreign country to be presented here in the United States, are
21 you able to take depositions in the foreign country that then
22 can be sworn testimony that can be presented in a court of law
23 in the U.S.?

24 A. Yes.

11:16 25 Q. And what process do you follow to obtain documents, for

1 example, by letters rogatory? How do you do that?

2 A. Same method. It's a formal request. You request it from
3 that country, and the country responds formally in writing.

4 Q. Now, you mentioned the IRS manual. Is there a manual called
11:16 5 the IRS special agents manual?

6 A. It's an IRS manual; it's part 9 of the manual. The general
7 public can see it. You can get it on the Internet.

8 Q. Are IRS special agents trained on what's in their manual?

9 A. Absolutely.

11:16 10 Q. And this process is actually laid out in the manual.

11 A. Correct.

12 Q. And that manual is actually -- you could go on the Internet
13 today and find it if you wanted it; is that correct?

14 A. Yes.

11:16 15 Q. Now, the -- you mentioned that not only IRS agents -- that
16 letters rogatory process, you called that kind of a formal
17 process; is that correct?

18 A. Correct.

19 Q. Can you explain to the jury, can IRS agents often obtain
11:17 20 evidence in a foreign country through a less formal process?

21 A. They can make inquiries in a less formal process.

22 Q. Explain that process.

23 A. We have agents stationed overseas in various countries. In
24 these various countries, say in Hong Kong, when I was an agent
11:17 25 and a supervisor, handled India. So if you wanted to contact --

1 if you wanted information from India, you would contact your
2 attaché in Hong Kong or the international section in Washington,
3 and they'd help you obtain or find the best method to obtain
4 those records.

11:17 5 Q. Now, over the years when you were a special agent or a
6 supervisory special agent during those 20-some years, did you
7 frequently obtain evidence from foreign countries through both
8 the formal and the informal process?

9 A. Frequently would be -- on numerous occasions.

11:18 10 Q. That's fine. On numerous occasions.

11 A. Yes.

12 Q. And did you do it both formally with letters rogatory and
13 informally with the process you just described?

14 A. Yes.

11:18 15 Q. And, for example, during your career as a special agent, did
16 you obtain evidence through letters rogatory from the nation of
17 India?

18 A. Yes.

19 Q. And as far as who makes the initial decision that it may be
11:18 20 necessary to try to go through a process to obtain evidence in a
21 foreign country, what role does the case agent -- when you were
22 a case agent -- or Mr. Cook as the case agent -- what role does
23 the case agent play in that process?

24 A. A significant part. Your job is to -- to determine or
11:19 25 uncover evidence to determine whether the allegations are true

1 or false. It's up to you to find -- and you work closely with
2 your supervisor, and if it's a grand jury case you work closely
3 with the U.S. Attorney's Office. But it's your responsibility
4 to prove or disprove or to make an effort to do so.

11:19 5 Q. Okay. Now, let me go to a little different subject matter.

6 During the years that you were an IRS special agent,
7 did you have occasion to testify as a summary witness where you
8 would be called upon to explain voluminous documents in a court
9 of law?

11:19 10 A. Yes.

11 Q. And in connection with that, have you also testified as an
12 expert in cases as a special agent?

13 A. Yes.

14 Q. At the end of last week, did I contact you and ask you if
11:20 15 you would come to Milwaukee and provide testimony in connection
16 with some documents that we were obtaining from the Pebble Beach
17 golf club in California that related to some testimony that was
18 presented towards the end of last week from a witness by the
19 name of Ramit Bhasin?

11:20 20 A. Yes, you did.

21 Q. And did you agree to be retained and to take on that
22 engagement to explain the records to the jury?

23 A. Yes, I did.

24 Q. Now, over the weekend, did I provide you with certain
11:20 25 records from the Pebble Beach Golf Course from June 1, 2009,

1 through June 30, 2009, that showed the names of people who
2 golfed at the Pebble Beach Golf Course in June of 2009?

3 A. Yes, you did.

4 Q. And did I show you some testimony from Ramit Bhasin where he
5 testified last week that he recalled a particular conversation
6 about a Citibank 1099 form in June 2009 while he was golfing on
7 the Pebble Beach Golf Course in California with Dr. Ahuja? Did
8 I show you that testimony?

9 A. Yes, you did.

10 Q. And did I ask you to review the records produced by the
11 Pebble Beach Golf Course folks to determine if the golf course
12 records showed two people, Ramit Bhasin and/or Dr. Arvind Ahuja,
13 golfing on any day between June 1, 2009, and June 30, 2009, at
14 the Pebble Beach Golf Course?

15 A. You showed it to me, and I did not see anybody with those
16 names.

17 Q. I asked you to do that anyway; is that correct?

18 A. Yes.

19 Q. Now, let me show you --

20 Can I have Defense Exhibit 2228? It's the binder of
21 the Pebble Beach --

22 (Defense counsel confer.)

23 MR. WEBB: May I approach the witness, Your Honor?

24 THE COURT: You certainly may.

25 (Document tendered to the witness.)

1 BY MR. WEBB:

2 Q. Sir, I have handed you what's marked as trial Exhibit 2228,
3 and I'll ask you are these the documents that you reviewed to
4 determine if Dr. Arvind Ahuja and/or Ramit Bhasin are shown as
11:22 5 golfing on the Pebble Beach Golf Course any time between June 1,
6 2009, and June 30, 2009? Are those the documents that I showed
7 you?

8 A. Yes, they are.

9 Q. And did you understand that we obtained these documents from
11:23 10 a subpoena served upon the Pebble Beach Golf Course after Ramit
11 Bhasin testified?

12 A. Yes.

13 MR. WEBB: I offer them into evidence.

14 MR. SULLIVAN: No objection, Your Honor.

11:23 15 THE COURT: They're received.

16 (Exhibit 2228 received in evidence.)

17 BY MR. WEBB:

18 Q. Now, these are voluminous documents, and so I'm just going
19 to -- do the documents in there cover each and every day from
11:23 20 June 1, 2009, to June 30, 2009, showing the people who golfed at
21 the Pebble Beach Golf Club?

22 A. Yes.

23 Q. And in doing -- each day is represented there, each day from
24 1 to 30, June 30. Is that correct?

11:23 25 A. That's correct.

1 Q. And so did you review carefully each and every page of this
2 exhibit to search for, to determine if you saw any record that
3 Dr. Arvind Ahuja or Ramit Bhasin are shown in the records as
4 golfing at the Pebble Beach Golf Course on any day between
11:24 5 June 1 and June 30, 2009?

6 A. I do not see them golfing on any day, based on these
7 records.

8 Q. Their names are not in the golf records; is that correct?

9 A. They are not.

11:24 10 Q. Now, I'm going to show you another exhibit also produced by
11 the golf course for the year earlier in July of 2008, which is
12 Exhibit 2229.

13 MR. WEBB: May I approach the witness?

14 THE COURT: You may.

11:25 15 (Document tendered to the witness.)

16 BY MR. WEBB:

17 Q. Sir, I have now handed you what is marked as trial
18 Exhibit 2229. And based on your review, does this appear to be
19 some records for the year 2008 showing Dr. Ahuja and Ramit
11:25 20 Bhasin being at Pebble Beach between July 2nd and July 5th,
21 2008?

22 A. Yes.

23 MR. WEBB: And I offer them into evidence.

24 MR. SULLIVAN: No objection.

11:25 25 THE COURT: Received.

1 (Exhibit 2229 received in evidence.)

2 MR. WEBB: Now, James, may I call up the first page of
3 that Exhibit 2229?

4 BY MR. WEBB:

11:26 5 Q. Based on the certification from Pebble Beach that you
6 observed, is this a screen shot of a search that was done by
7 Pebble Beach to determine whether Arvind Ahuja and Ramit Bhasin
8 ever stayed at Pebble Beach between March of '08 and the current
9 date?

11:26 10 A. I believe August 17th, yes.

11 Q. That was a couple days ago.

12 A. Right.

13 Q. So they did a search of all their records to see whether
14 Arvind Ahuja and Ramit Bhasin actually stayed at Pebble Beach
11:26 15 anytime in the last four years.

16 A. Correct.

17 Q. And based on the document that's on the screen, can you
18 explain to the jury when did the Pebble Beach people determine
19 that Dr. Arvind Ahuja and Ramit Bhasin were at Pebble Beach?

11:27 20 A. Between July 2nd, 2008, and July 5th, 2008.

21 Q. And there were no other records indicating they were there
22 at any other time; is that correct?

23 A. That's correct.

24 Q. And if you go to the second page of this exhibit of
11:27 25 Exhibit 2229 --

1 MR. WEBB: Can you call that up, James? I know this
2 is hard to read. James, if you go down a bit you'll see a
3 record of -- you'll see -- James, you'll see PB links and some
4 charges. If you go up maybe the first one-third of the page. I
11:27 5 think it will show up on the screen.

6 BY MR. WEBB:

7 Q. It's a little small, but, sir, do you see that there's a
8 record that on July 3rd of '08 that Dr. Ahuja pays for two
9 people to golf on the Pebble Beach links golf course, and the
11:28 10 charges are there; is that correct?

11 A. Yes. On July 3rd, 2008.

12 Q. That's on July 3rd; is that correct?

13 A. Correct.

14 Q. And there are some other miscellaneous charges, but it
11:28 15 appears that these two gentlemen are at Pebble Beach Golf Course
16 on July 3rd of 2008; is that correct?

17 A. That's correct.

18 Q. Now, as far as having a conversation about Citibank 1099s,
19 Agent Cook, I'll represent to you, just testified that Dr. Ahuja
11:28 20 opened up his Citibank account in October of 2008. That
21 testimony was just presented to the jury.

22 A. Okay.

23 Q. And did I show you actually that document last night, the
24 exhibit, showing Dr. Ahuja opened up the Citibank account on
11:29 25 October 16th, 2008, with a deposit of \$1 million?

1 A. Yes.

2 Q. Now, so the jury understands, so that account was opened
3 several months after they played golf in 2008 at Pebble Beach;
4 is that correct?

11:29 5 A. That's correct.

6 Q. And can you explain to the jury -- Strike that.

7 Are you familiar with when banks such as Citibank
8 would -- when would Arvind Ahuja have received his first 1099
9 form from making that deposit at Citibank in October of 2008?

11:29 10 A. Sometime before February of 2009 and after January of 2009.
11 Between January and February of 2009.

12 Q. So Dr. Ahuja would not have even received any 1099 for
13 months after that golf course event in July; is that correct?

14 A. Correct.

11:30 15 Q. Just one other brief area.

16 At my request, sir, have you reviewed certain defense
17 exhibits, specifically 2190 and 2195, so that you could
18 summarize for the jury some information about HSBC, which is a
19 bank that's in issue in this case? Did you look at those
20 documents?

11:30

21 A. Yes, I did.

22 Q. Let's start with, is it clear from the documents reviewed
23 that HSBC is an international bank?

24 A. Yes.

11:30 25 Q. Where is the parent -- is the name of the parent corporation

1 that -- is the name of the parent corporation called HSBC
2 Holdings PLC?

3 A. Yeah. It's a holding company.

4 Q. And where is the parent corporation located?

11:31 5 A. In London.

6 Q. And do they have several thousand affiliated banks in many
7 countries across the world?

8 A. Correct.

9 Q. And among the different banks that they have as affiliated
11:31 10 banks, is one of them in the United States that's called
11 HSBC-USA?

12 A. Yes.

13 Q. And is that a United States chartered bank subject to the
14 laws of the United States?

11:31 15 A. Yes.

16 Q. And just even HSBC-USA itself here in the United States,
17 does it have many, many branches across the United States?

18 A. It does.

19 Q. And is one of them in New York City?

11:31 20 A. Yes.

21 Q. And did you also determine that they have an affiliated bank
22 called -- in India called HSBC-India?

23 A. Yes.

24 Q. And do they also have an affiliated bank in the Channel
11:31 25 Islands called HSBC-Jersey?

1 A. Yes.

2 MR. WEBB: I have no more questions.

3 CROSS-EXAMINATION

4 BY MR. SULLIVAN:

11:32 5 Q. Good morning, Mr. Braver. How are you?

6 A. Good. How are you doing today?

7 Q. I'm John Sullivan. I'm with the U.S. Department of Justice,
8 and I represent the United States in this matter.

9 You were asked questions about 1099s from Citibank.

11:32 10 Do you recall that?

11 A. Yes.

12 Q. In your 25 years of experience as an IRS special agent, did
13 you ever have occasion when a foreign-based bank issued a 1099?

14 A. Foreign-based bank? You know, it's kind of a tricky
11:33 15 subject, what you mean by foreign-based bank. Do they have
16 entities in the United States or do they not have entities in
17 the United States?

18 Q. Well, you're familiar with UBS in Switzerland, I take it,
19 from your experience, correct?

11:33 20 A. Yes.

21 Q. And you know they have branches here in the United States,
22 UBS; is that correct?

23 A. I do.

24 Q. And do you realize that in February of 2009 they entered
11:33 25 into a deferred prosecution agreement --

1 MR. WEBB: Objection.

2 THE COURT: That's beyond the pale. Ask another
3 question.

4 MR. SULLIVAN: Withdrawn, Your Honor.

11:33 5 BY MR. SULLIVAN:

6 Q. Do banks in Switzerland issue Forms 1099 to U.S. customers
7 who maintain Swiss bank?

8 MR. WEBB: Your Honor, I'm going to object. It's
9 outside the scope.

11:33 10 THE COURT: Approach.

11 (At side bar on the record.)

12 THE COURT: I'd like to hear why this is not beyond
13 the pale.

14 MR. SULLIVAN: They raised the issue of 1099s.
11:34 15 Citibank had an NRI office that assisted U.S. customers set up
16 accounts in India.

17 THE COURT: The issue is with respect to banks other
18 than ones that are under discussion in this case.

19 MR. SULLIVAN: I will restrict it to banks under
11:34 20 discussion in this case.

21 THE COURT: All right.

22 MR. WEBB: Your Honor, I asked no questions about
23 banks in Switzerland.

24 THE COURT: That's why that's now off limits.

11:34 25 MR. SULLIVAN: Got it.

1 (End of discussion at side bar.)

2 THE COURT: The question has been withdrawn. Proceed.

3 BY MR. SULLIVAN:

11:35 4 Q. Sir, are you familiar with the fact that HSBC in India is a
5 separate legal entity than the bank here in the United States
6 called HSBC-North America USA?

7 A. Yes.

8 Q. And does HSBC in India issue 1099s on deposits that are
9 maintained in India?

11:35 10 A. I don't know. I mean, does that person have an account in
11 the United States or not have an account in the -- there's a lot
12 of different questions that would have to be answered for me to
13 give an accurate answer.

14 Q. For individuals that maintain bank accounts over in India,
11:36 15 does HSBC-India, to your knowledge, issue 1099s to the United
16 States?

17 A. You're saying those individuals are U.S. citizens or they
18 live in the United States? They have residency in the United
19 States? I'm not -- there's a lot of different questions.

11:36 20 Q. No. The question is, sir: For deposits that are over in
21 India, does HSBC-India issue Forms 1099-INT for interest income
22 to the United States of America?

23 MR. WEBB: Your Honor, that assumes facts not in
24 evidence, and I object.

11:36 25 THE COURT: Overruled.

1 THE WITNESS: I don't know if they do --

2 THE COURT: Is there any other objection? I'm not
3 sure I fully understand the objection.

4 MR. WEBB: Your Honor, my objection is if -- I don't
11:36 5 want to argue in front of the -- objection. Relevancy.

6 THE COURT: Overruled.

7 THE WITNESS: You asked me if it's a U.S. citizen with
8 deposits over --

9 MR. SULLIVAN: Could the court reporter please read
11:37 10 the question.

11 (Record read.)

12 THE WITNESS: Whose deposits? I can't answer that
13 without -- you're just saying any deposits in India?

14 BY MR. SULLIVAN:

11:37 15 Q. Any deposits in India.

16 A. From who? From a U.S. citizen or an individual that lives
17 in the United States or someone who lives in the United Kingdom?

18 Q. Can you just answer the question, sir? Do they issue 1099s?

19 THE COURT: Rephrase your question.

11:37 20 THE WITNESS: Thank you.

21 BY MR. SULLIVAN:

22 Q. For deposits that are maintained over in India, that are
23 physically located in India, does HSBC-India issue 1099s INT to
24 the Internal Revenue Service of the United States of America?

11:38 25 A. I don't know.

1 Q. Do you think they do?

2 MR. WEBB: Object to the form of the question.

3 THE COURT: Sustained.

4 BY MR. SULLIVAN:

11:38 5 Q. Based on your 25 years of experience as an IRS special
6 agent, can you name one foreign country where the banks in that
7 foreign country issue 1099s to the IRS?

8 A. Again, if -- if I don't live in the United States and I'm
9 not a U.S. citizen --

11:38 10 THE COURT: One second. Do you understand the
11 question which was posed?

12 THE WITNESS: I do not. I'm sorry.

13 THE COURT: All right. Ask another question.

14 BY MR. SULLIVAN:

11:38 15 Q. You were a special agent with the IRS for 25 years, correct?

16 A. Correct.

17 Q. And in any of your investigations, did any of the people
18 that you were investigating have foreign-based bank accounts?

19 A. Yes.

11:39 20 Q. Which countries?

21 A. Isle of Mann in the Cayman Islands, India, South Africa.
22 Numerous countries. Hong Kong.

23 Q. And to your knowledge, did any of those countries ever issue
24 Forms 1099 for the people that you were investigating to the
11:39 25 Internal Revenue Service of the United States?

1 MR. WEBB: Object to the form of the question.

2 THE COURT: Objection sustained.

3 BY MR. SULLIVAN:

4 Q. To your knowledge, did those foreign banks ever issue 1099s
11:39 5 and submit a copy of it to the Internal Revenue Service of the
6 United States?

7 A. Not to my knowledge.

8 Q. You testified that you were given portions of Mr. Bhasin's
9 testimony in this case; is that correct?

11:40 10 A. Correct.

11 Q. And it wasn't clear which portions you were provided, but
12 were you provided the portion of his testimony where he was
13 asked this question and gave this answer:

14 "QUESTION: If it turns out that the records show that
11:40 15 you were in Milwaukee and not in California, you couldn't have
16 played golf in California; is that correct?

17 "ANSWER: That would be correct."

18 Were you provided with this portion of the transcript?

19 A. No.

11:40 20 Q. Is it possible that Ramit Bhasin was mistaken and that in
21 the summer of 2009 he actually was in the Milwaukee area?

22 MR. WEBB: Objection.

23 THE COURT: Sustained.

24 MR. SULLIVAN: I'll move on, Your Honor.

11:41 25 BY MR. SULLIVAN:

1 Q. As part of your investigation, you didn't canvass all the
2 golf courses in the greater Milwaukee area to confirm that
3 Mr. Bhasin and Dr. Ahuja did not play golf in the -- in June
4 of 2009 in this area, did you?

11:41 5 A. I did not.

6 Q. You testified that when you were an IRS special agent that
7 it was your responsibility as an agent to either prove or
8 disprove the allegations in the particular matter that you were
9 investigating. Do you recall that?

11:41 10 A. I do.

11 Q. And are you aware that the basic allegation in this case is
12 that Dr. Ahuja failed to report \$2.7 million of interest income
13 over the period 2005 through 2009?

14 MR. WEBB: Objection. Scope.

11:41 15 THE COURT: Objection sustained.

16 BY MR. SULLIVAN:

17 Q. You were asked questions about obtaining evidence located in
18 a foreign country. Do you recall that?

19 A. I do.

11:42 20 Q. Did you ever have a situation in the cases that you
21 investigated involving undeclared offshore bank accounts where
22 the bank in the foreign country maintained a representative
23 office here in the United States?

24 A. Yes. I did.

11:42 25 Q. And were you able to obtain records from that representative

1 office that were helpful in your investigation of the person you
2 were investigating?

3 A. In these cases, I obtained or I attempted to obtain
4 information from overseas bank accounts as well.

11:42 5 Q. I'll reask the same question: Were you ever able to get
6 relevant information from the representative office that was
7 located in the United States?

8 A. I was able to get relevant or complete information would be
9 my --

11:43 10 Q. I believe I said relevant.

11 A. There's a lot of sources of evidence, and you try to get
12 all --

13 THE COURT: Please -- one second. Please listen to
14 the question. If you don't understand the question, we can have
11:43 15 the question reasked or recrafted.

16 Would you read back the last question?

17 (Record read.)

18 THE WITNESS: Yes.

19 BY MR. SULLIVAN:

11:43 20 Q. And are you familiar with the evidence that was gathered in
21 this case from the representative office of HSBC-India that was
22 located in the United States?

23 MR. WEBB: Objection. Scope.

24 THE COURT: Sustained.

11:44 25 BY MR. SULLIVAN:

1 Q. Sir, isn't it true that the United States of America cannot
2 use a grand jury subpoena to obtain evidence located in a
3 foreign country?

4 A. That's correct.

11:44 5 MR. SULLIVAN: That's all I have, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. WEBB:

8 Q. Very briefly, sir. When Counsel was asking you questions
9 about whether or not an entity like a bank in a foreign country
10 and whether a 1099 would be issued, you said to Mr. Sullivan,
11 "It might depend on whether the U.S. citizen had a domestic
12 account related to the account in the foreign country"; is that
13 correct?

14 A. That's correct.

11:45 15 Q. Would you please explain why that's important in connection
16 with whether the U.S. bank should issue a 1099 for the accounts
17 that are in a foreign country?

18 MR. SULLIVAN: Objection. Foundation.

19 THE COURT: Objection sustained.

11:45 20 BY MR. WEBB:

21 Q. Well, sir, when you told Mr. Sullivan -- Strike the
22 question.

23 I know you haven't sat through this trial, but I will
24 represent to you --

11:45 25 THE COURT: One second. No. Change the form of the

1 question.

2 MR. WEBB: I will.

3 BY MR. WEBB:

4 Q. Sir, when you said to Mr. Sullivan it would depend on
11:45 5 whether the U.S. citizen had an account in the United States,
6 what were you referring to in connection with 1099s?

7 A. He had an account in the United States, U.S. entities should
8 be issuing 1099s.

9 Q. Even for accounts that are in foreign countries affiliated
11:45 10 with the US Bank?

11 A. Again, it's a technical question and I would have to do more
12 research on it.

13 Q. But at least has that been your experience?

14 A. Yes.

11:46 15 Q. Now, you mentioned that it's one thing to talk about
16 obtaining relevant evidence. But when you're an IRS special
17 agent, are you supposed to try to obtain complete evidence?

18 A. Correct.

19 Q. Why is that important?

11:46 20 A. You want to make sure that you have all the evidence to
21 prove or disprove you. You want -- you need to know all the
22 facts.

23 Q. And the matters that you said you handled where you were
24 able to get some documents from the U.S. when it involved
11:46 25 foreign bank accounts, you said you still wanted to get

1 information from the foreign country; is that correct?

2 A. Correct.

3 Q. Is that --

4 A. Well, go ahead.

11:46 5 Q. Why is that?

6 A. Because as a special agent and as a supervisor, you want to
7 make sure -- anytime you have a case involving international
8 assets or income, you want to contact the international group
9 and the attaché and make sure that you obtain whatever records
10 are available.

11:47

11 MR. WEBB: I have no more questions.

12 RECROSS-EXAMINATION

13 BY MR. SULLIVAN:

14 Q. Have you ever heard the expression "I'm calling off the
15 dogs"?

11:47

16 MR. WEBB: I'm going to object on relevancy.

17 THE COURT: Overruled.

18 THE WITNESS: Have I heard the expression? Yes, I
19 have.

11:47

20 BY MR. SULLIVAN:

21 Q. And that basically means that --

22 THE COURT: Well, you can't testify.

23 MR. SULLIVAN: I withdraw that.

24 BY MR. SULLIVAN:

11:47

25 Q. What does that mean to you, sir?

1 A. Calling off the dogs?

2 Q. Yes.

3 A. Ending your investigation. Making a determination.

4 Q. And once you ended your investigation and were satisfied you
11:48 5 had sufficient evidence to make a recommendation to prosecute,
6 what would you do?

7 A. I'd prepare a report and submit that recommendation. But
8 your investigation isn't completed until --

9 MR. SULLIVAN: Your Honor, I ask that the witness be
11:48 10 instructed to answer my question.

11 MR. WEBB: He was answering the question.

12 THE COURT: He was answering the question. Proceed.

13 THE WITNESS: Your investigation isn't complete
14 until -- until it's finalized -- until either you don't
11:48 15 prosecute or you prosecute and -- so you never stop
16 investigating, in my opinion.

17 BY MR. SULLIVAN:

18 Q. But in this particular case, it wasn't your call to make
19 regarding whether to refer the case for prosecution; is that
11:49 20 correct?

21 A. Absolutely.

22 Q. That was Special Agent Cook's call, right?

23 A. Correct.

24 Q. And what is the IRS procedure for once the Internal Revenue
11:49 25 Service decides it's going to refer a case for prosecution?

1 What happens next?

2 A. It's a long process, but it goes to the supervisor who
3 reviews it. After that, it goes to general counsel within the
4 IRS, they review it with a recommendation, that recommendation
11:49 5 is given back to the supervisor to review, and then it goes to
6 the special agent in charge in that office with a
7 recommendation. Special agent in charge is -- would then either
8 sign or not sign the report or the recommendation and forward it
9 or not forward it. Then it would go to Department of Justice
11:50 10 Tax Division. From Department of Justice Tax Division, it could
11 go to the U.S. Attorney's Office or to -- Department of Justice
12 could make a determination to prosecute or not prosecute.

13 Q. And is the purpose of all those reviews to ensure that
14 there's sufficient evidence --

11:50 15 THE COURT: One second. Approach.

16 (At side bar on the record.)

17 THE COURT: I'm troubled by the line of questioning
18 that you're asking at this point in time. I'd like to hear from
19 the defense.

11:50 20 MR. WEBB: Two things. One, it's completely
21 irrelevant. And number two, it's outside the scope.

22 THE COURT: You may be heard.

23 MR. SULLIVAN: Your Honor, they are trying to suggest
24 through the testimony of this witness that the government,
11:51 25 especially Special Agent Cook, did an incomplete investigation

1 because they didn't get the records from India. This witness
2 has personal knowledge about the review function and how many
3 layers there are that go beyond Special Agent Cook's. And I'm
4 going to end here, Your Honor. I'm not going to go deep into
11:51 5 this, but the bottom line is that these cases -- he will be able
6 to testify they don't go forward unless there's a determination
7 made that there's adequate evidence to go forward.

8 THE COURT: I'm going to sustain the objection.

9 (End of discussion at side bar.)

11:51 10 THE COURT: Ask another question, please.

11 BY MR. SULLIVAN:

12 Q. And, sir, in connection with your testimony are you being
13 paid today?

14 A. I am.

11:52 15 Q. Approximately how much money have you been paid by the
16 defense in connection with your investigation in this case and
17 your testimony today?

18 A. I have not billed yet for this. I bill at \$250 an hour.

19 Q. And so approximately how much will you be paid? How much
11:52 20 will you bill the defense in connection with your testimony
21 today?

22 A. A rough estimate, around \$5,000. Not for today. In my
23 preparation.

24 MR. SULLIVAN: No further questions.

11:52 25 MR. WEBB: I have no more questions.

1 THE COURT: One second. Does the jury have questions
2 of the witness?

3 (No response.)

4 THE COURT: None. You're excused.

11:52 5 (Witness excused at 11:52 a.m.)

6 THE COURT: Are there additional witnesses at this
7 time?

8 MR. WEBB: Not at this time. May we be heard briefly
9 at side bar, very, very briefly?

11:52 10 THE COURT: Yes.

11 (At side bar on the record.)

12 MR. WEBB: I had told you earlier that this is my last
13 witness.

14 THE COURT: That's why I phrased it as I did.

11:53 15 MR. WEBB: I know you did. I'll be candid with the
16 Court, I was surprised by the implication that they played golf
17 in Milwaukee, which I didn't think that was their position. But
18 I do have a witness from the Milwaukee golf course which I may
19 have to call. I don't know yet. I'm going to have to evaluate
20 that. But I have the records showing --

21 THE COURT: Your case is still open.

22 MR. WEBB: I just wanted you to be aware of that.
23 Thank you.

24 (End of discussion at side bar.)

11:54 25 THE COURT: I faked you out the last time. That was

1 the last witness of the day. You will have the afternoon to
2 enjoy the weather, or go home and work. Or to go back to work.
3 But in any event, I look forward to seeing you tomorrow at 8:30.
4 As usual, please take your notebooks with you; do not do any
11:54 5 research; do not communicate with anyone electronically, orally,
6 or in any other manner; and of course, do not visit anyplace
7 local that may have been mentioned during the course of the
8 trial.

9 I'll see you tomorrow.

11:54 10 THE BAILIFF: All rise.

11 (Jury out at 11:54 a.m.)

12 THE COURT: Be seated, please.

13 The defense mentioned -- well, it did submit a Rule 29
14 motion, and we also need to discuss the defendant's possible
11:55 15 testimony in this case.

16 How do you wish to proceed? Do you wish to address
17 the Rule 29 motion after lunch and then address whether or not
18 the defendant will be testifying or is there some other manner
19 in which you would prefer to go forward? Mr. Webb?

11:56 20 MR. WEBB: Your Honor, I don't think it makes any
21 difference to us. The defendant can be advised at any point
22 that you want. But we can also do that this afternoon. I think
23 it might make sense to come back after whatever luncheon recess
24 you have to argue the Rule 29 motion, and we can deal with the
11:56 25 defendant at that same time, if that's acceptable to the Court.

1 THE COURT: We will take our luncheon break. We will
2 resume at 1:00 o'clock:

3 MR. WEBB: Thank you.

4 THE COURT: All right.

11:56 5 (Recess taken at 11:56 a.m., until 1:03 p.m.)

6 THE COURT: The defendants have submitted a motion for
7 a judgment of acquittal under Rule 29 of the Federal Rules of
8 Criminal Procedure. The court will entertain argument at this
9 time.

01:04 10 MR. KIRSCH: Thank you, Your Honor.

11 RULE 29 MOTION

12 MR. KIRSCH: Your Honor, I'd like to address this in
13 three parts and -- really in four parts.

14 And for some of the parts, I rely on the briefs to a
01:04 15 heavier extent. So if you have questions, of course, I'm happy
16 to answer any questions. But there are particular areas that
17 I'd like to focus on.

18 And the four parts, Your Honor, are parts -- the first
19 part is that the indictment should be dismissed with respect to
01:04 20 the failure to identify foreign accounts on both Schedule B and
21 the FBAR because of lack of notice.

22 And we've included that argument in Section 2 of our
23 brief. And I think it sets out our argument pretty clearly
24 there.

01:04 25 The second part of our argument that I'm going to

1 address -- and I'll address these in reverse order -- but the
2 second part of the argument is the Counts 1 through 4,
3 underreporting interest income earned on interest at HSBC, which
4 is the bank that is at issue here with respect to interest.

01:05 5 The third part of my argument is Counts 1 through 4
6 with respect to failing to report on Schedule B interest in a
7 foreign financial account.

8 And then the third part where I'd like to start in
9 some detail is the FBARs, Count 5 through 8.

01:05 10 Your Honor, the FBAR counts should not be a part of
11 this case. In Joint Proposed Instruction Number 27 that was
12 filed with the court in July, July 12, Document Number 112 --
13 it's page 35 of that document -- and I think the government and
14 the defendant, when we submit our new instructions, we still
01:06 15 agree that this is a correct statement of the law.

16 The mens rea requirement for an FBAR violation is
17 willful. And the government -- as indicated in this
18 instruction, the government has to prove that the defendant
19 acted willfully, if he knew it was his legal duty to file an
01:06 20 FBAR and intentionally failed to do so.

21 Your Honor, there is no evidence in the record that
22 the defendant knew he had a legal duty to file an FBAR. The
23 only evidence with respect to this is Mark Miller's testimony
24 about a meeting that he had with the defendant in August of
01:06 25 2009.

1 So as an initial matter, '08, '07, and '06 are out.
2 He can't possibly know of a legal duty -- there's absolutely no
3 evidence that he knew of any legal duty to file an FBAR before
4 2009. So those years have to be out.

01:06 5 In August of 2009, Mr. Miller testified that he had a
6 meeting with the defendant and Tom Branch, and he very clearly
7 testified that he mentioned that there were some foreign bank
8 reporting requirements, but he did not mention FBAR reporting
9 requirements. And he explained that he wouldn't do that because
01:07 10 he wouldn't explain to his clients that they had reporting
11 obligations on certain or particular forms.

12 So -- and, Your Honor, you may recall Mr. Bhasin's
13 testimony on this point when Mr. Bhasin said, "I have no idea
14 what an FBAR is. It's archaic. I never knew about it."

01:07 15 Although that doesn't reflect on the defendant's
16 knowledge, it does reflect in general that the defendant would
17 have no way to know he had to file an FBAR.

18 So our argument with respect to Counts -- with respect
19 to the FBAR counts in '06, '07, and '08, is there is absolutely
01:08 20 no evidence in the record that the defendant knew it was his
21 legal duty to file an FBAR and intentionally failed to do so.

22 And so, Your Honor, those counts must be dismissed and
23 should not go to the jury.

24 And with respect to 2009, the argument is --

01:08 25 THE COURT: Let me interrupt you and ask you about the

1 2006 return.

2 MR. KIRSCH: Yes, Your Honor.

3 THE COURT: That's Exhibit 12. On page 4 of that
4 exhibit, which is a 1040 for 2006, at line 7a it says -- above
01:09 5 7a it says: "You must complete this part if you had over \$1500
6 in taxable interest or ordinary dividends; or, (b), had a
7 foreign account; or, (c), received a distribution from or were a
8 grantor of or a transferor to a foreign trust."

9 7a goes on to read: "At any time during 2006, did you
01:09 10 have an interest in or a signature or other authority over a
11 financial account in a foreign country such as a bank account,
12 securities account, or other financial account?"

13 In light of that, can you say that there's no evidence
14 in this record regarding your client's obligation, if any --

01:09 15 MR. KIRSCH: Yes, Your Honor.

16 THE COURT: -- to file an FBAR?

17 MR. KIRSCH: Yes, Your Honor. I think that actually
18 supports my point.

19 The government has to prove -- the mens rea here is
01:10 20 willful. It's very clear. And the government has to prove that
21 the defendant knew that it was his legal duty to file an FBAR.

22 I'm going to address Schedule B because there's no
23 evidence that the defendant knew of this question on Schedule B.

24 THE COURT: Well --

01:10 25 MR. KIRSCH: But there's no --

1 THE COURT: Wait a minute. Wait a minute. To say
2 that he had no knowledge of this question ignores page 3 where
3 it says: "Under penalty of perjury, I declare that I have
4 examined this return and accompanying schedules and statements,
01:10 5 and to the best of my knowledge and belief, they are true,
6 correct, and complete. Declaration of preparer or other
7 taxpayer is based on all information of which preparer has any
8 knowledge."

9 MR. KIRSCH: Your Honor, I recognize that. But
01:11 10 Schedule B does not reflect any obligation to file an FBAR.
11 2006 --

12 THE COURT: There's a certification that the person
13 has examined the return and that it is complete and that this
14 return for 2006 includes information respecting foreign
01:11 15 accounts. It has a response that your client has certified to
16 be accurate and complete and reflection of his knowledge.

17 MR. KIRSCH: Your Honor, I -- I agree that's reflected
18 on the 1040 form. There was no FBAR form filed, which is a
19 separate form.

01:11 20 THE COURT: Yeah. I understand that.

21 MR. KIRSCH: And there's no indication in this tax
22 return whatsoever that he had an obligation to file an FBAR.
23 There's nothing in here that indicates he has an obligation to
24 file an FBAR.

01:11 25 Now, the Schedule B I was going to talk about

1 separately, but that relates to Counts 1 through 4, not Counts 5
2 through 9.

3 THE COURT: Okay. Go ahead.

4 MR. KIRSCH: So the government has to prove that he
5 knew it was a legal duty to file an FBAR. That's very specific.

6 And with the willfulness standard, that's what they
7 have to prove. And they can't prove it with respect to the
8 FBAR.

9 And I submit that even in 2009 the evidence that they
10 have, which is Mark Miller's testimony that he had a general
11 conversation about the need to report foreign bank accounts,
12 does not tell the defendant or put the defendant on notice that
13 he had a legal duty to file an FBAR. Schedule B in Counts 1
14 through 4 are separate, and they're different.

15 THE COURT: So you are asserting that notwithstanding
16 reference to foreign accounts in Schedule B, the government has
17 not shown that there is any other information that your client
18 had respecting any obligation to file a separate form respecting
19 foreign accounts.

20 MR. KIRSCH: Correct. And in particular an FBAR form.
21 It's not just a separate form. It's got to be very specific,
22 and that's an FBAR form.

23 And so there's just -- there's no evidence that he
24 knew of an obligation to file an FBAR form.

25 Putting Schedule B aside for a minute, that's my

1 argument with respect to Counts 5 through 9.

2 Now, with respect to Counts 1 through 4, I rely on the
3 brief to a heavy extent here, but there are two parts of 1
4 through 4. Part 1 is the interest income.

01:13 5 And, Your Honor, I submit to you that the evidence is
6 overwhelming that, if 1099s have been received from HSBC, the
7 income would have been reported on the tax returns; and,
8 therefore, the government cannot satisfy its burden in this case
9 of proving that the defendant acted willfully on that part or
01:14 10 those parts of Counts 1 through 4.

11 And then with respect to the Schedule B part of 1
12 through 4, the court correctly pointed out that the defendant
13 signed the returns under penalties of perjury, but Mark Miller
14 testified the manner in which the defendant signed and reviewed
01:14 15 the returns, and he testified that he never discussed Schedule B
16 with him. And he testified that he was the one that checked the
17 box "No."

18 And, Your Honor, I respectfully suggest that's the
19 same manner in which Ramit Bhasin's amended tax return had a box
01:14 20 that was checked "No" from 2007.

21 So, Your Honor, I just don't -- I don't think that the
22 government can prove a willful violation by simply pointing to
23 the fact that the defendant signed a return. I don't think that
24 meets their burden. I think they've got to prove he knew --
01:14 25 now, there's two things. They got to prove he knew of an

1 obligation to report interest income, but he did report interest
2 income. So I'm focused on the foreign account. They have to
3 prove that he knew he had an obligation to report foreign
4 accounts.

01:15 5 Now, in '09, August of '09, they have Miller's
6 testimony regarding a general conversation that year. And I
7 think even with respect to those -- with respect to those
8 foreign accounts, Miller testified that it wasn't until '09 that
9 he even made anybody aware of any filing obligations.

01:15 10 But even then he didn't discuss Schedule B; he didn't
11 discuss the question at 7a, and he was the one that checked the
12 box "No."

13 So I think, Your Honor, what should be dismissed from
14 this case are Counts 5 through 9 in total, and I think the
01:15 15 second part of Counts 1 through 4, which are failing to disclose
16 a financial interest in a foreign account, should also be
17 dismissed.

18 And then I rely on my brief with respect to the other
19 arguments, with the notice argument and also the interest income
01:16 20 from HSBC argument, which I suggest is Part I of Counts 1
21 through 4.

22 THE COURT: Does the government wish to respond first
23 with respect to the FBARs?

24 MS. SISKIND: Yes, Your Honor. There was several
01:16 25 pieces of evidence in this case that showed the defendant was

1 aware of the duty to file an FBAR.

2 First, the tax return itself asking questions on
3 Schedule B about foreign accounts. In particular the 2007,
4 2008, and 2009 tax returns. If Your Honor looks at the
5 Schedule B, they specifically make reference following the
6 foreign bank account question to the form number for an FBAR.
7 It was actually right on the Schedule B.

8 By the defendant certifying that he was aware of the
9 contents of his tax return, he was also certifying that he was
10 aware of the FBAR form number that is contained after the
11 foreign bank account question on the Schedule B.

12 The defendant was also aware that his accountant
13 wanted information about foreign bank accounts. Mr. Miller
14 testified that every year Kolb+Co sent out a tax organizer that
15 contained, among other things, questions about foreign bank
16 accounts. And the -- and Mr. Miller also testified that the
17 issue was specifically raised in two face-to-face meetings with
18 the defendant in August and December of 2009.

19 It's a combination of direct knowledge of the FBAR
20 filing requirement and willful blindness, because Mr. Miller
21 testified that had the defendant just told him that he had a
22 foreign account then Mr. Miller would have looked into the
23 matter further, determined whether the defendant had \$10,000,
24 such that the filing threshold was met, and then would have, if
25 the defendant wanted him to, prepared an FBAR.

1 Because the defendant concealed the existence of his
2 foreign accounts from his accountant, no such form was prepared.
3 He concealed those accounts when every year he received that tax
4 organizer asking him for questions -- for information about
01:18 5 foreign bank accounts and still did not tell Mr. Miller that he
6 had foreign accounts.

7 He concealed that information in August of 2009 when
8 he told Mr. Miller that he would follow up on a few bank or
9 brokerage accounts, and then never did so.

01:18 10 He concealed that information in December of 2009 when
11 the FBAR reporting requirement was a specific agenda item on the
12 year-end tax planning meeting and still the defendant did not
13 speak up and tell his accountant that he had foreign accounts.

14 If he had told his accountant about those accounts, an
01:18 15 FBAR would have been prepared. And so that is the willful
16 blindness component.

17 The actual knowledge component is the tax returns
18 themselves, which he certified that he had knowledge of, which
19 requests information about foreign bank accounts. And for three
01:19 20 of the years specifically mentioned the form number for the
21 FBAR.

22 THE COURT: So are you suggesting that your evidence
23 respecting the FBAR requirement is greater with regard to tax
24 years 2007, 2008, and 2009?

01:19 25 MS. SISKIND: I think it's strong for all of the

1 years, Your Honor. It's specifically mentioned on the form in
2 three of those years, but in all four years, the defendant
3 received a tax organizer asking him for information about
4 foreign accounts. In all four years --

01:19 5 THE COURT: Does -- can you point to anything in the
6 tax organizer that makes it clear that the defendant knew there
7 was a separate form he was required to submit respecting foreign
8 bank accounts?

9 MS. SISKIND: Your Honor, the tax organizer was not in
01:19 10 evidence. We have the testimony of Mr. Miller regarding what
11 the tax organizers said.

12 THE COURT: But I do not recall Mr. Miller saying
13 anything about an FBAR requirement. Did I miss something?

14 MS. SISKIND: No, Your Honor. This is where the issue
01:20 15 of willful blindness comes in. His accountant was asking him
16 for foreign bank account information on that tax organizer.

17 Mr. Miller testified that had the defendant told him
18 about a foreign account, Mr. Miller would have made further
19 inquiries to make him aware of the FBAR requirement. So it's
01:20 20 knowledge based on willful blindness, not investigating the
21 situation because not wanting to learn about that particular
22 requirement.

23 THE COURT: So you acknowledge there is no indirect --
24 there is no direct evidence that Dr. Ahuja knew of a particular
01:20 25 form he had to file with his 2006 tax return respecting foreign

1 account interest.

2 MS. SISKIND: No direct evidence for 2006, Your Honor.

3 THE COURT: All right. And is there anything that

4 goes beyond the Schedule B of the 2006 form and the fact

01:21 5 Mr. Miller's firm, Kolb+Co, provided materials to their clients,

6 including Dr. Ahuja, requesting that they report interest which

7 would then be reflected in any tax returns filed by the tax

8 preparer?

9 MS. SISKIND: No, Your Honor.

01:21 10 THE COURT: Well, how can you say specifically that

11 Dr. Ahuja knew about this form?

12 MS. SISKIND: Your Honor, for 2007, 2008, and 2009 the

13 defendant signed the tax returns acknowledging that he was

14 familiar with their contents and that they were true, accurate,

01:22 15 and complete.

16 The standard for a Rule 29 is to view the evidence in

17 the light most favorable to the government.

18 THE COURT: I understand that.

19 MS. SISKIND: So that suggests that he signed that

01:22 20 return knowing of its contents.

21 The contents of the 2007, 2008, and 2009 returns

22 included a reference to the FBAR. It's right there on the

23 Schedule B under the foreign bank account question.

24 THE COURT: Are you aware of any case law which

01:22 25 discusses whether or not a defendant in a criminal tax case may

1 be convicted on evidence which does not include any particulars
2 respecting the FBAR form?

01:23 3 MS. SISKIND: Your Honor, I believe there's case law
4 that when a defendant signs a tax return he's presumed to have
5 knowledge of its contents.

6 THE COURT: I'm talking specifically about the FBAR
7 form.

8 MS. SISKIND: No, Your Honor.

01:23 9 THE COURT: And so the theory of the government is
10 that the mere execution -- I should say, preparation of a tax
11 return which certifies under penalty of perjury that a taxpayer
12 has examined the return and that it is complete is enough to
13 support a conviction if the FBAR form is not submitted along
14 with the return.

01:24 15 MS. SISKIND: Yes. That is the government's position,
16 Your Honor, because by signing the form he acknowledged that the
17 contents were complete, and that he was familiar with the
18 contents.

01:24 19 And for 2007, '8, and '9 on Schedule B it says that
20 there was information about filing requirements for a form
21 TDF 90-22.1, which is the FBAR.

22 So the notice to him with the filing requirement is
23 right there on the tax return that he certified that he's
24 familiar with.

01:24 25 THE COURT: But that only applies to 2007 and

1 thereafter, correct?

2 MS. SISKIND: Yes, Your Honor.

3 THE COURT: Inasmuch as 2006 does not mention the
4 form, why should this court conclude, even viewing the evidence
01:25 5 in the light most favorable to the government, that Dr. Ahuja
6 knew that he had to file that form?

7 MS. SISKIND: Your Honor, for that year his knowledge
8 is established, essentially, by willful blindness. The fact
9 that he deliberately concealed his foreign bank accounts from
01:25 10 his accountant, despite receiving a tax organizer that asked for
11 information about that. Had he provided -- and Mr. Miller
12 testified that had the defendant told him "I have a foreign bank
13 account," Mr. Miller would have taken steps to determine whether
14 an FBAR was required.

01:25 15 By concealing that information, he took away the
16 possibility that Mr. Miller would prepare that form because why
17 would Mr. Miller prepare it if the defendant didn't tell him
18 there are foreign bank accounts?

19 THE COURT: All right. Let's move on.

01:25 20 MR. KIRSCH: Your Honor, may I be heard first to 2006?

21 THE COURT: Surely.

22 MR. KIRSCH: Your Honor, that turns the standard on
23 its head. The fact that something was mailed -- and may have
24 been mailed -- they don't have the 2006 tax organizer. It's not
01:26 25 in evidence. So we have no idea what it said.

1 The fact that something may have been mailed to
2 somebody that they're going to show that that was willful
3 blindness? They can't even prove that it was mailed; they can't
4 prove that it was received; they can't prove that he looked at
5 it. There's just --

01:26

6 THE COURT: When you say something may have been
7 mailed, are you referring to the 1099s?

8 MR. KIRSCH: No, no. In 2006 -- first of all, I don't
9 think the testimony supports the government's argument. The
10 government put in one single tax organizer from 2009.

01:26

11 The '06 tax organizer is not in evidence. We don't
12 know what it says. We don't know if it asked about foreign
13 accounts. We don't know if it was mailed to the defendant. We
14 don't know if the defendant received it. We don't know if the
15 defendant looked at it and read it.

01:26

16 We do know that the defendant never filled them out
17 and never used them. To say that willful blindness is the
18 failure to receive mail, Your Honor, that standard is one
19 that -- there's just no way that can be the standard for
20 willfulness in 2006.

01:26

21 So 2006 has got to go.

22 2007 through 2009 should also go for this reason:
23 Your Honor, the government wants to suggest to you that the
24 standard for willfulness is signing a tax return. That
25 decidedly is not the standard. There are misdemeanor tax

01:27

1 violations for filing erroneous tax returns, for making a
2 mistake.

3 The government's argument to this court is that it
4 should accept the argument that whenever a taxpayer makes a
01:27 5 mistake on a tax return, no matter how simple it is, no matter
6 how irrelevant it is -- and keep in mind with the FBAR there's
7 no tax due -- so no matter how insignificant the error is, the
8 government can prove willfulness, just based on the inference
9 from him signing the tax return.

01:27 10 That cannot be the law. It can't be the law. It
11 would apply -- that is so broad and it would be so sweeping.
12 Imagine a perjury -- everything the government -- well, you made
13 a mistake. We can infer, we just infer that it was deliberate
14 and that it was willful. And we don't need anything else but
01:28 15 your signature on the bottom of this form that Mark Miller
16 testified he never reviewed the forms, he never looked -- Mark
17 Miller testified he checked "No" on the box.

18 So there's no way that the government can say just
19 because he signed the form we should be able to get up in front
01:28 20 of this jury and the court should accept the standard that
21 signing a form under a penalty of perjury can necessarily lead
22 to willfulness because that's all their evidence. Your Honor,
23 that cannot be the law. It just cannot be the law.

24 And I don't think they have a single case in the
01:28 25 United States to support that argument that signing a tax return

1 under penalty of perjury is enough by itself to satisfy the
2 willfulness requirement.

3 And, Your Honor, they put on Mark Miller; they put on
4 four days of evidence. They never put on any evidence including
01:29 5 tax organizers or anything else from '06, '07, '08 -- and '08.
6 And even the tax organizer from '09, Mark Miller testified that
7 Dr. Ahuja, like, about 25 percent of his clients did use the tax
8 organizer.

9 The government can't prove that Tom Branch didn't
01:29 10 receive the tax organizer and throw it in the garbage. I mean,
11 to say that you can infer willfulness from the fact that mail
12 might have been sent to somebody's residence when there's no
13 evidence that it was read, that it was filled out, Your Honor,
14 that just turns the standard. It wipes willfulness right out of
01:29 15 the statute. It turns the standard right on its head.

16 I just don't think there's any way these FBAR
17 violations can survive, particularly considering even Mark
18 Miller's testimony -- I wasn't gonna get to this, but I'll just
19 mention it.

01:29 20 With respect to Schedule B, the questions on
21 Schedule B, Mark Miller testified he never told Dr. Ahuja about
22 those questions. Dr. Ahuja --

23 THE COURT: Let me ask you this.

24 MR. KIRSCH: Yes.

01:30 25 THE COURT: Is there a requirement -- is the

1 government's theory -- perhaps, I should ask this of the
2 government and not you.

3 Is the government's theory that it is the form that
4 Dr. Ahuja was required to submit or something else? And in
01:30 5 particular whether it was only essential that he report the
6 foreign accounts on his Schedule B?

7 MS. SISKIND: Your Honor, there's two separate issues.
8 Counts 1 through 4 of the indictment charge one of the bases for
9 returns being false is failure to report it on Schedule B.

01:30 10 Counts 5 through 8 charge him with failure to file an
11 FBAR.

12 So he fully was supposed to file his bank account in
13 two different places, one on the Schedule B and one on the FBAR.

14 So as far as the FBAR, we do need to prove
01:31 15 willfulness, which was intentional violation of a known legal
16 duty, the duty being to report his foreign bank accounts on the
17 FBAR.

18 And we've proven that through the statements on the
19 forms, on the tax returns themselves for '07, '8 and '9, the
01:31 20 existence of the tax organizers.

21 And certainly Mr. Kirsch points out alternative
22 inferences that can be drawn from the tax organizers, maybe the
23 defendant didn't see them, maybe they got thrown out. But
24 that's not the standard on Rule 29. It's evidence in the light
01:31 25 most favorable to the government. The fact that there are

1 adverse inferences that could cause the jury to acquit doesn't
2 bear on whether there's sufficient evidence to survive a Rule 29
3 motion.

01:31 4 MR. KIRSCH: Your Honor, respectfully the jury can't
5 make an inference from no evidence. There's just no evidence
6 that he saw these. I mean, if they had somebody that testified
7 he saw them, he received them, he reviewed them, he discussed
8 them, then the jury could make the inference.

01:32 9 I submit the jury might be able to make the inference
10 that he knew about it. Here they can't even show that. And
11 they've not put them in evidence. We don't know what they said
12 in '06, '07, and '08. We don't know if they asked about foreign
13 accounts. They certainly didn't ask about FBARs, we know that.

01:32 14 There's just -- they can't just say because something
15 exists -- I mean, that's the whole purpose of Rule 29. I mean,
16 if they can say, "Well, we just said it exists so we can throw
17 it up and see what the jury thinks," there would be no Rule 29.

18 THE COURT: All right. What's your next issue?

01:32 19 MR. WEBB: Your Honor, the next issue -- and this is
20 sort of the same issue. So it can be more streamlined.

01:32 21 The next issue is the Schedule B, and it's,
22 essentially, the same argument. Although I think the court has
23 to rely on the undisputed testimony of Mark Miller, that Mark
24 Miller testified he never discussed Schedule B with the
25 defendant.

1 Now, the defendant signed the tax returns. That's not
2 in dispute here. He signed them under penalty of perjury.
3 That's not in dispute. But, Your Honor, I don't think that's
4 the test for willfulness. That would mean that -- in every
01:33 5 single tax case in America if a taxpayer made a mistake, the
6 government could charge the case under 26 U.S.C. 7206, bring it
7 into a federal court, and then say, "Well, it may have been the
8 simplest mistake in the world, but the defendant signed the
9 returns. So we get to present it to the jury; we get to let the
01:33 10 jury decide whether the defendant acted willfully."

11 So '06, '07, and '08 with respect to Schedule B,
12 that's all they've got. All they've got is the signed returns.

13 In '08 they've got a conversation with Mark Miller --
14 I'm sorry -- '09, August of '09 they've got a conversation with
01:33 15 Mark Miller. So '09 is a little different because of the
16 conversation, but, again, Mark Miller never mentions Schedule B,
17 and he doesn't know about the reporting obligation on
18 Schedule B.

19 But in '06, '07, '08, they can't even show that he has
01:34 20 a reporting obligation anywhere with respect to foreign tax
21 accounts. They can't even prove that he knew it, let alone that
22 he knew it and then willfully disregarded it.

23 And, Your Honor, I respectfully suggest -- I know
24 Rule 29 motions are rarely granted, but Rule 29 is there for a
01:34 25 purpose, and it's there for a purpose for cases like this where

1 the inferences the government is asking the jury to make is not
2 based on the evidence.

3 And there is no evidence that Dr. Ahuja knew about any
4 reporting requirement for foreign bank accounts in '06, '07, and
01:34 5 '08, and there's no evidence. And, in fact, the evidence is the
6 opposite that he knew about Schedule B and Part III of
7 Schedule B in 2009.

8 So '06, '07, '08, clear. I think '09 should go as
9 well. But I think that -- well, Your Honor, that's our
01:35 10 position. Unless the court has any questions, I'll stop.

11 THE COURT: Not now. Is there anything else from the
12 government?

13 MS. SISKIND: On the Schedule B issue, just that
14 unlike with the FBAR issue, where it was only on three of the
01:35 15 returns, the foreign bank account question is on all four of the
16 returns. The defendant signed the returns acknowledging that he
17 knew what it contained. The question was on there. The
18 reasonable inference to be drawn from that, viewing it in the
19 light most favorable to the government, is that he knew that the
01:35 20 return asked him for questions about foreign bank accounts.

21 That combined with the tax organizers, the meetings in
22 2009, where even after being directly asked by his accountant
23 about foreign accounts, he still didn't tell his accountant,
24 that speaks volumes about his mental state going back through
01:35 25 all of the years and his concealment of those accounts.

1 THE COURT: All right. Is there anything more in
2 opposition to the motion?

3 MR. KIRSCH: Unless the court has questions, I'll rely
4 on the brief with respect to the underreporting of interest
01:36 5 income.

6 THE COURT: I'll listen to what the government has to
7 say with respect to the unreported income. If there's nothing
8 further --

9 MS. SISKIND: Your Honor, the defense is pointing to
01:36 10 this lack of a 1099 from HSBC as if receiving a 1099 from a bank
11 is somehow a necessary condition to reporting interest income on
12 a tax return. There really has been no dispute he didn't get a
13 1099, but that doesn't mean he didn't know that the accounts
14 existed and that he was earning interest income from them and
01:36 15 that he had an obligation to report that interest income on his
16 tax returns.

17 The account opening forms that the government has put
18 in, both from -- particularly Exhibit 42 from HSBC-India -- it
19 makes clear on the form that he's opening a bank account in
01:36 20 India. It's an NRI account application, non-resident Indian.
21 That's an account in India.

22 He knew that it was an account in India because he
23 knew -- he knew that wasn't just some investment from his
24 HSBC-USA account. You heard Agent Cook testify today that the
01:37 25 account number off of those HSBC-United States bank statements,

1 that's not the same as his India account, that's not the same as
2 his Jersey account. Those were separate bank accounts.

3 And he knew that those accounts were earning interest
4 income because he was investing them in certificates of deposit.

01:37 5 We saw an e-mail from the defendant to Ankush Tandon
6 asking whether a CD had matured. We saw a tax declaration
7 signed by the defendant in which he acknowledged that he's the
8 beneficial owner of interest income from that account, and that
9 he was a tax resident of the United States. And that's

01:37 10 Exhibit 47.

11 We also saw that he was wire transferring millions of
12 dollars from the United States to an account in India, that he
13 was writing letters to the bank referring to his account at both
14 HSBC-India and in Jersey.

01:38 15 So he knew he had foreign accounts. He knew that the
16 money in those accounts was invested in certificates of deposit.
17 He knew that he was receiving interest income. And when he
18 signed Exhibit 42, the NRI account opening form, he signed a
19 customer declaration in which he acknowledged his responsibility
01:38 20 to report his worldwide income.

21 Both that form and the two account opening forms from
22 Citibank we looked at earlier today advised the defendant
23 regarding his -- the necessity to consult his tax advisor for
24 further information, which, of course, he did not do in this
01:38 25 case.

1 So all of those facts taken together and the -- all
2 those facts taken together, the fact that he knew that he had
3 foreign accounts that were not the same as his U.S. account, he
4 knew they were CDs, and he knew that he had to report that
01:38 5 interest income, which I'll also add he knew he had to report
6 foreign interest income because he also reported the foreign
7 interest income from Citibank when they sent him a 1099.

8 So the court should not look at this 1099 as some kind
9 of magic bullet that because he didn't receive it that destroys
01:39 10 the whole case. There is ample other evidence to establish that
11 he knew he had interest income and that he knew he had to report
12 that interest income on his tax return.

13 THE COURT: I will take the motion under advisement.
14 I do anticipate looking more closely at the issues, and if I can
01:39 15 come to a conclusion respecting any one or more of the counts
16 before this matter is submitted to the jury, you will be so
17 advised.

18 Let's turn to the next matter for consideration, and
19 that is the matter of the testimony of the defendant during the
01:40 20 trial. At side bar the defense indicated that it may have made
21 a decision as to whether or not the defendant will testify.

22 Does the defense wish to be heard at this time?

23 MR. WEBB: Your Honor, I would confirm what I told you
24 at side bar that I have advised the defendant about his right to
01:40 25 testify, made it clear to him that it's his decision, and he is

1 waiving the right to testify in this proceeding.

2 THE COURT: Do you wish to query your client on the
3 record?

01:40

4 MR. WEBB: Yeah, I can do so, Your Honor, just to make
5 a record.

6 Doctor -- just go ahead and sit down.

7 Doctor, over time have I on several occasions advised
8 you of your right in this case to provide testimony to the jury
9 if you desire?

01:40

10 THE DEFENDANT: Yes, you have.

11 MR. WEBB: Did I tell you that at the end of the day
12 it's ultimately your decision and only you can make that
13 decision?

14 THE DEFENDANT: Yes, you have.

01:40

15 MR. WEBB: And have you told me that fully knowing
16 that it is your decision and fully understanding you have a
17 right to testify that you have made the decision not to testify
18 and you are waiving your right to testify in this proceeding?

19 THE DEFENDANT: Yes, I am.

01:41

20 THE COURT: Dr. Ahuja, has anyone used any threat,
21 force, or intimidation to get you to give up your right to
22 testify in this case?

23 THE DEFENDANT: No, they have not.

01:41

24 THE COURT: Do you feel that you have been pressured
25 in any way by your lawyers or any other person, including your

1 spouse or children, regarding whether you should testify?

2 THE DEFENDANT: No, I have not.

01:41

3 THE COURT: And do you recognize that you are giving
4 up your right to address this jury during the course of this
5 trial by not testifying?

6 THE DEFENDANT: Yes, I am.

7 THE COURT: Very well. The court accepts the
8 defendant's waiver of his right to testify in this case. It
9 appears that that decision was freely and voluntarily made.

01:42

10 JURY INSTRUCTION CONFERENCE

11 THE COURT: With that, I turn next to the subject of
12 jury instructions. It's my understanding that the parties are
13 desirous of having some off-the-record discussions in order to
14 determine whether or not there are issues the court will need to
15 address concerning the instructions.

01:42

16 MS. SISKIND: Yes, Your Honor. And to that end, just
17 as you were walking out on the bench this afternoon, I e-mailed
18 your law clerk with the most recent version --

19 THE COURT: You're trying to break records here.

01:42

20 MS. SISKIND: Yes, Your Honor. I e-mailed your law
21 clerk.

22 THE COURT: Speed is good but not necessarily in
23 speech.

01:42

24 MS. SISKIND: Your Honor, as you were walking out this
25 afternoon, I was just on the computer e-mailing your law clerk

1 the most recent version of the jury instructions. And it might
2 be helpful for Your Honor to have them while we're talking.

3 THE COURT: Is the most recent version one that the
4 defense has signed off on?

01:43 5 MS. SISKIND: There are some still outstanding issues
6 in that packet, but for the most part, we are in agreement.

7 THE COURT: Mr. Webb, or, Mr. Kirsch?

8 MR. WEBB: I'll let Mr. Kirsch address it.

9 MR. KIRSCH: Your Honor, that's correct. I think it
01:43 10 will be easiest if we work off that version. I have three
11 proposed instructions that I'd like to hand up to the court:
12 One is agreed upon; one is the theory of the defense; and then
13 one is an instruction that we disagree on. It's our version of
14 the willfulness instruction.

01:43 15 THE COURT: All right.

16 MR. KIRSCH: Can I do that now, Your Honor?

17 THE COURT: Surely.

18 MR. KIRSCH: Now, the one that we agree upon, there
19 was a minor modification. I just had to hand write it in.

01:44 20 So, Your Honor, for the record -- I'm going to hand
21 you up one instruction that's Joint Proposed Instruction
22 Number 24, "Reportable Accounts Definition," and I'll just write
23 on it "Agreed." That is the one that we have agreed to.

24 And then the next one is entitled, "Theory of the
01:44 25 Defense."

1 And the next one is Joint Proposed Instruction 21, but
2 I'm going to change that to say, "Defense Proposed Instruction
3 Number 21, Definition of 'Willfully.'"

4 And I'll give them to you in that order, Your Honor.

01:44 5 (Documents tendered to the court.)

6 THE COURT: I assume the government has looked at
7 these instructions?

8 MS. SISKIND: We have, Your Honor.

9 THE COURT: Do you have any comments, first of all,
01:45 10 with regard to the theory of defense instruction?

11 MS. SISKIND: We have no objection to it. We would
12 recommend that it be put in the jury instructions after the
13 instruction about what the indictment charges but before
14 Your Honor gets into the elements of the crimes.

01:45 15 THE COURT: Mr. Kirsch?

16 MR. KIRSCH: Your Honor, that's fine, wherever you
17 think it fits. I think that's a fine place for it.

18 THE COURT: And with regard to the Defense Proposed
19 Instruction 21, I note this is referencing the pattern
01:45 20 instructions with the modification.

21 MS. SISKIND: Your Honor, the actual willfulness
22 instruction in the pattern is much more general than the
23 instruction proposed by the defense. It contains the same first
24 sentence, but then the pattern instruction has a second sentence
01:45 25 which reads: "The defendant acted willfully with respect to a

1 particular income tax return if he knew it was his legal duty to
2 file a truthful individual tax return and intentionally filed a
3 false return."

4 So the pattern instruction speaks generally of the
01:46 5 defendant's knowledge of his legal duty to file a true and
6 accurate tax return.

7 The instruction proposed by the defense speaks in much
8 more specifics about particular lines. So we would ask that we
9 go with the pattern instruction.

01:46 10 THE COURT: What is the reason -- or what are the
11 reasons for these specific lines that are mentioned in your
12 instruction, Mr. Kirsch? I note lines 8A, 9A, and 22.

13 MR. KIRSCH: The indictment. I think, Your Honor, the
14 reason -- the willfulness instruction -- I agree with what
01:46 15 Ms. Siskind said, the willfulness instruction is general.

16 But the indictment is specific. The government can't
17 charge in the specific and prove in the general. And so the
18 defense should not have to bear the burden of explaining to the
19 jury what willfulness means.

01:47 20 The indictment -- Your Honor, this language -- what I
21 did when I modified the definition of willfulness instruction, I
22 took the government's instruction -- I think it's 16 -- and I
23 think this was an agreed-upon instruction -- that describes the
24 charges in Counts 1 through 4 and 5 through 9. And I literally
01:47 25 just cut and pasted right into the willfulness instruction what

1 they have to prove.

2 So this is unquestionably a correct statement of the
3 law. This is what they have to prove. And I think the
4 government just wants the advantage of having a very vanilla and
01:47 5 very general willfulness instruction because they don't want to
6 have to prove specifically what was charged in the indictment.

7 And I think that would be a huge disadvantage to the
8 defense. And I think what we have done here is correctly set
9 forth the law.

01:48 10 So, respectfully, Your Honor, I think this is the
11 instruction that the court should give on definition of willful.

12 And, of course, Your Honor, as the court knows, the
13 pattern instructions for things like this, they don't take into
14 account the specifics charged in any one indictment. If that
01:48 15 was the case, they wouldn't be a pattern.

16 THE COURT: Hold, please.

17 (Brief pause.)

18 THE COURT: I'm inclined to give the instruction as
19 tendered by the defense. We'll look more closely at it, but at
01:50 20 this point, it seems to me that it's an appropriate instruction.

21 Is there anything else?

22 MR. KIRSCH: Your Honor, with respect to the --

23 Ms. Siskind and I, we spent the lunch hour going over the
24 instructions. And we went through the -- we worked off the

01:50 25 version that, I think, Ms. Siskind e-mailed to your law clerk.

1 And if the court has that --

2 THE COURT: I have it in hand.

3 MR. KIRSCH: I can just -- if I can just go through.
4 I think I can go through these very quickly and identify the
01:50 5 issues.

6 First with Instruction Number 9, it's the defense
7 position that the court should give this missing witness
8 instruction, and that the court should name Priti Dhanani and
9 Ankush Tandon as missing witnesses.

01:50 10 So that's the first -- that's the first -- let me make
11 sure that there are none before that that we agree should come
12 out of this version, Your Honor.

13 Well, I guess if we go to Instruction Number 2,
14 there's a little bracket --

01:51 15 THE COURT: Well, let's -- before we go to another
16 instruction, I'm not certain that there is sufficient evidence
17 in the record to support an instruction of this sort, inasmuch
18 as there is no showing that it was within the power of the
19 government to bring Dhanani and Tandon into the court.

01:51 20 According to the testimony, each is an Indian citizen,
21 and there is no indication that they are now in this country or
22 otherwise subject to subpoena.

23 Can you point me to anything beyond that to indicate
24 that they are, indeed, in this country and available to testify?

01:52 25 MR. KIRSCH: Two things, Your Honor. I brought out

1 during the cross-examination of Agent Cook that he interviewed
2 Ms. Dhanani in Washington, D.C.

3 THE COURT: Yes. But that doesn't address whether she
4 was available on the date of trial or at any point during the
5 course of this trial.

6 MR. KIRSCH: Well, that may be so, Your Honor, but the
7 government -- I also brought out the testimony on
8 cross-examination from Agent Cook that she was interviewed after
9 the indictment was returned in this case.

10 THE COURT: That still doesn't indicate that she was
11 available at the outset or at any point during the course of the
12 trial.

13 MR. KIRSCH: But what it does indicate is that the
14 government could have served her with a trial subpoena. You
15 asked about trial subpoenas. The government could have served
16 her with a trial subpoena and chose not to. That's issue number
17 one.

18 So the court could have compelled her to be here for
19 trial had the government exercised its power to issue a subpoena
20 when it interviewed her in September of 2011, after the
21 indictment had been returned.

22 And, Your Honor, they didn't do it. They chose not to
23 do it.

24 The second issue, of course, is the letters rogatory
25 process.

1 THE COURT: Let's not move on. I'd like to nail this
2 down.

3 MR. KIRSCH: Yes, Your Honor.

4 THE COURT: Does the government wish to respond to the
5 Instruction Number 9 as proposed by the defense?
01:53

6 MS. SISKIND: Yes, Your Honor. First, to pick up on
7 the subpoena issue, even if the government had served her with a
8 trial subpoena when she was interviewed, serving someone with a
9 subpoena is different than enforcing that subpoena when trial
10 comes. And she is back in India. There's no telling whether
01:54 11 she would have come to trial with that subpoena or not,
12 particularly in light of the inability to enforce that subpoena.

13 Agent Cook can't get on a plane and go to India and
14 arrest her when she doesn't show up. The U.S. Marshals can't do
01:54 15 that if she doesn't show up. And there has been no showing --
16 and the case law requires this -- that to get the missing
17 witness instruction, which is highly disfavored in this circuit,
18 the instruction -- the pattern jury instructions start out by
19 saying, "It is the view of the committee that a missing witness
01:54 20 instruction should not be given unless there are extraordinary
21 circumstances."

22 The case law looks to whether the defense tried to
23 access the witness, because the case law says that, if a witness
24 is equally unavailable to both parties, then the missing
01:54 25 instruction is not appropriate.

1 So she's out of the country. Even if she had been
2 served with a subpoena, there's no telling whether she would
3 have come to court or not, and certainly enforcement resources
4 wouldn't have been brought to bear because she's in a foreign
01:55 5 country. And there's been no showing that the defense has even
6 tried to get her to voluntarily come here to testify in court.

7 THE COURT: How do you reply, Mr. Kirsch?

8 MR. KIRSCH: Well, Your Honor, the government's
9 resting on a standard that if served she might not have shown
01:55 10 up. That's true for a witness, I guess, that lives down the
11 street. That's not the test.

12 The government could have served her and deliberately
13 chose not to. The government could have also exercised its
14 power through letters rogatory. And the court can take judicial
01:55 15 notice of that. Had they wanted to bring Ms. Dhanani here, they
16 could have done it. Particularly considering the country in
17 which she is in, India, is not necessarily a hostile country to
18 the judicial system in the United States.

19 They could have had her here. They chose not to get
01:55 20 her here, and this is the purpose for the missing witness
21 instruction. This is the extraordinary purpose.

22 MS. SISKIND: Your Honor, can I make one response?

23 THE COURT: Surely.

24 MS. SISKIND: The defense has made no effort to
01:55 25 contact -- that we know of -- to contact Ms. Dhanani or secure

1 her testimony. They could have moved under Rule 15 to take a
2 deposition of her in India and present that at trial. But
3 absent a showing that the defense attempted to interview the
4 witness, the case law suggests that a missing witness
01:56 5 instruction is not appropriate.

6 *United States vs. Disantis*, D-I-S-A-N-T-I-S, a Seventh
7 Circuit case from 2009, 565 F.3d 354 at page 364.

8 "The defendant was not entitled to the missing witness
9 instruction when he failed to subpoena the witness."

01:56 10 So it's not just whether the government had access,
11 it's also whether the defendant could have independently gained
12 access to the witness. And when the witness is equally
13 unavailable to both parties, the Seventh Circuit has said that
14 the missing witness instruction is not appropriate.

01:57 15 THE COURT: The government's citation of *Disantis*
16 appears to be accurate. And I note that at page 364 of the
17 *Disantis* decision, the Seventh Circuit wrote, and I quote: "A
18 district court has broad discretion in refusing to give missing
19 witness instructions which are generally disfavored." I'll omit
01:58 20 the citation. Quote: "To establish entitlement to a missing
21 witness instruction, a defendant must prove two things: First,
22 that the absent witness was particularly within the government's
23 power to produce; and, second, that the testimony would have
24 elucidated issues in the case and would not merely have been
01:58 25 cumulative." Citation is to *Gant*, 396 F.3d at page 910 as well.

1 Quoting *U.S. vs. Valles*, V-A-L-L-E-S.

2 Now, from what has been asserted here by the defense,
3 the government failed to issue a subpoena -- a trial subpoena to
4 Dhanani and Tandon and as a consequence did not produce them,
01:59 5 regardless of whether they would have been -- well, without
6 regard to what they would have testified to.

7 There is nothing here in this record to show that
8 these witnesses would have testified unfavorably with respect to
9 the government. Moreover, there appears to be evidence -- there
01:59 10 is evidence in the record indicating that persons are outside of
11 the United States, and that they're not within the control of
12 the United States Government.

13 In fact, I further note that these individuals were
14 the subject of requests by HSBC to allow them to remain in the
02:00 15 United States for a limited period of time. I do not recall
16 anything to indicate that these individuals remain in the United
17 States and accept the representation that they are outside of
18 the United States at this point in time.

19 And, hence, I'm not inclined to give this missing
02:00 20 witness instruction on the record in this particular case.

21 I will look further, obviously, because I do not have
22 the opportunity to do anything other than a cursory research
23 with respect to this particular issue based upon the citation
24 that was just noted by the government.

02:01 25 Let's move to the next instruction.

1 MR. KIRSCH: Your Honor, Instruction Number 2. I
2 think that both parties agree that the bracketed language should
3 come out. I don't think the court's taken judicial notice of
4 anything in this trial.

02:01 5 THE COURT: I do not recall doing so. So that's
6 correct.

7 MR. KIRSCH: And then in Instruction Number 3, the
8 bracketed language regarding the defendant's testimony should
9 come out.

02:01 10 THE COURT: Correct.

11 MR. KIRSCH: The next one, Your Honor, is Instruction
12 Number 13. I think the parties are in agreement that that
13 should come out. There's been no character --

14 Your Honor, can I have just one minute?

02:02 15 THE COURT: Surely.

16 (Defense counsel confer.)

17 MR. KIRSCH: Your Honor, with respect to 13, I was
18 just thinking as we were talking. Your Honor, can I just -- I
19 would like to look at the record tonight on Mark Miller's
02:02 20 testimony. There was no character evidence per se, but he may
21 have given opinion evidence. So this instruction --

22 THE COURT: He did.

23 MR. KIRSCH: So can we just -- we have to fill in the
24 blank. Can we just reserve this one for now?

02:03 25 THE COURT: Surely.

1 MR. KIRSCH: And I guess the same for 15. We'll have
2 to look at what --

3 THE COURT: What day did Mr. Miller testify?

4 MR. KIRSCH: He testified on Friday.

02:03 5 (Brief pause.)

6 MR. KIRSCH: Your Honor, the next issue is Number 20.

7 And this was a unanimity -- this is a unanimity instruction.

8 This came up at the pretrial conference. We had submitted --

9 and I think we've argued this. I think the court reserved

02:04 10 ruling. Both parties presented a unanimity instruction.

11 (Brief pause.)

12 MR. KIRSCH: Your Honor, I see, if you're looking at
13 what you have in front of you, looking at Instruction Number 20,
14 the first one is Government's Proposed Instruction Number 20,
02:04 15 and then the second one is Defendant's Proposed Instruction
16 Number 20. And we discussed this one. This one existed at the
17 time of the pretrial conference, and it's the defendant's
18 preference for this instruction that we use the Seventh Circuit
19 pattern, which is our proposed instruction.

02:05 20 And at the pretrial conference, the court's ruling
21 was, "I'll pass on this and issue a ruling."

22 THE COURT: Is the government in agreement with the
23 defense, or does it believe that a different instruction should
24 be given with regard to unanimity?

02:05 25 MS. SISKIND: I think we can go with the pattern

1 instruction on this.

2 THE COURT: All right.

3 MR. KIRSCH: And then, Your Honor, the next issue is
4 Instruction Number 21, which the court's already decided, that's
02:05 5 the willfulness issue. So we would --

6 And then, Your Honor, with Joint Proposed Instruction
7 Number 24, I've handed up the modified version of that that
8 we've agreed on, for Instruction Number 24.

9 And then I think the last issue -- well, Your Honor,
02:06 10 there's issue Number 26. And the government would like to
11 include the ostrich instruction, and the defense opposed the
12 ostrich instruction.

13 This is not -- the standard here is willfulness. The
14 ostrich instruction would not be appropriate in this case. The
02:06 15 definition of knowing is used -- actually. I'm not even -- I'm
16 not -- I wonder if this -- we may have to look at this
17 instruction more closely. This would have clearly been in the
18 instructions when the conspiracy count was in.

19 But to give an ostrich instruction would totally
02:06 20 confuse the willfulness. I don't think the court could give --
21 even if the court needs to define "the defendant knew" because
22 it may be used in these instructions, I don't think in this case
23 where the standard for all eight counts is willfulness that the
24 court could give the ostrich instruction. That would, of
02:07 25 course, obliterate the willfulness standard.

1 THE COURT: Does the government wish to weigh in on
2 this particular instruction?

3 MS. SISKIND: Yes, Your Honor. We still request the
4 ostrich instruction. It applies particularly to the FBAR
02:07 5 counts. As charged in the indictment, the FBAR counts say that
6 Arvind Ahuja did unlawfully, willfully, and knowingly fail to
7 file the FBAR. So it is important to further define
8 "knowingly."

9 And as we discussed in the context of the Rule 29
02:07 10 argument, there are issues about how the government is proving
11 knowledge of the FBAR requirement that rely -- that the ostrich
12 instruction would help explain.

13 THE COURT: All right. I understand.

14 MR. KIRSCH: Your Honor, I don't mind defining
02:07 15 "knowingly" as the word is defined in the first paragraph. But
16 I think the issue is only with respect to whether the court
17 should give the ostrich instruction with the second paragraph,
18 and the government can't say that they have to prove willfully
19 and knowingly and then take away willfully with the ostrich
02:08 20 instruction.

21 THE COURT: Well, I would agree that the second
22 portion of the instruction as crafted with the brackets would be
23 inappropriate.

24 Would the government take exception to that?

02:08 25 MS. SISKIND: Yes, Your Honor. It does not modify

1 willfully. Willfulness is intentional violation of a known
2 legal duty. So in addition to proving willfulness, we need to
3 prove that he knew he had a legal duty to file an FBAR.

02:08 4 THE COURT: But the second portion of the instruction,
5 which has the brackets, says, "You may infer knowledge from a
6 combination of suspicion and indifference to the truth."

7 It's the "indifference to the truth" portion of the
8 instruction that appears to be inappropriate, because you are
9 asserting willful conduct and not just an indifference on the
02:09 10 part of this defendant.

11 MS. SISKIND: Yes, Your Honor. We can withdraw that
12 part of the instruction.

13 THE COURT: All right.

14 MR. KIRSCH: Your Honor, I think the only issues --
02:09 15 Your Honor, could we just have one moment to confer?

16 THE COURT: Off the record.

17 (Discussion off the record.)

18 MR. KIRSCH: Your Honor, there's two more issues.
19 I'll let the government address them, that the government wants
02:09 20 two more instructions.

21 MS. SISKIND: Your Honor, at the time of the final
22 pretrial conference, there was three other instructions the
23 government proposed and the defense objected to, one of which
24 the court ruled outright Your Honor was not going to give.
02:09 25 There were two that the court reserved ruling on, and I would

1 like to revisit those at this time.

2 And it's Document Number 114 on ECF. They were
3 separate because they were not joint instructions.

4 THE COURT: One moment.

02:09 5 (Brief pause.)

6 THE COURT: What pages?

7 MS. SISKIND: Page 3 would be the first instruction,
8 Document 114.

9 THE COURT: This is the fraud and false statements
02:10 10 instruction?

11 MS. SISKIND: Yes. We are asking for an additional
12 instruction that the government is not required to prove a tax
13 deficiency in order to sustain its burden of proof on 7206.1.

14 THE COURT: All right. The defendant did certainly
02:10 15 argue that this case is one where he has paid his taxes and has
16 offered proof that amended returns were submitted, along with
17 payments.

18 That being so, can the defense indicate why this
19 wouldn't be an appropriate instruction?

02:11 20 MR. KIRSCH: Yes, Your Honor. I think those two
21 things are addressing different issues.

22 This instruction would state, with respect to Counts 1
23 through 4, the government's not required to prove that any
24 additional tax was due. But the government's proved that by the
02:11 25 amended instructions.

1 So the fact that there was additional tax due is not
2 at issue. So the amended returns are actually the reason that I
3 argued at the pretrial conference and I'm arguing now, this
4 instruction is entirely unnecessary.

02:11 5 First of all, it only applies to Counts 1 through 4,
6 and we have amended tax returns, and there's been a lot of
7 evidence that there was additional tax due. So that's not an
8 issue in the case. There's just no reason to instruct the jury
9 on this when it's just not at issue.

02:12 10 THE COURT: And wouldn't the instruction make clear to
11 the jury that it's not an issue?

12 MR. KIRSCH: Well, I'm not sure. It could just
13 confuse the jury as to why there's an instruction on this. I
14 mean, if the court was -- I think it would just confuse the
02:12 15 jury.

16 THE COURT: I disagree. There's nothing about this
17 instruction that's confusing. It certainly would make crystal
18 clear that a tax due -- the government is not obligated to show
19 that there was or there is a tax due.

02:13 20 So I will give this instruction.

21 All right. What's the next issue, Ms. Siskind?

22 MS. SISKIND: The other instruction would be the one
23 on page 5 of Document Number 114, regarding punishment. The
24 court also reserved ruling on this instruction after the final
02:13 25 pretrial conference. And in light of testimony in this case, we

1 are renewing our request for this now.

2 In Mr. Webb's cross-examination of Mr. Bhasin, the
3 issue was raised about how Mr. Bhasin might have to go to jail
4 if he had not cooperated with the government.

02:13 5 While certainly that was appropriate cross-examination
6 of a cooperating witness, it may have planted a seed in the
7 jury's mind on the issue of punishment, and it should be made
8 clear to the jury that that is not a proper consideration when
9 reaching a verdict in this case.

02:14 10 THE COURT: Mr. Kirsch, can you tell me why I should
11 not give this instruction?

12 MR. KIRSCH: Yes, Your Honor. There's no pattern
13 instruction on this.

14 THE COURT: I know.

02:14 15 MR. KIRSCH: In the Seventh Circuit. The Seventh
16 Circuit --

17 THE COURT: But I have given this instruction in other
18 cases. So I'd like to know why it would be inappropriate here
19 in light of the testimony that was brought out and the
02:14 20 cooperation of Mr. Bhasin was the subject of substantial cross,
21 particularly with regard to his agreement with the government
22 concerning prosecution.

23 MR. KIRSCH: Yes, Your Honor. That testimony had to
24 do with benefits that he received in obtaining the
02:14 25 non-prosecution agreement.

1 Your Honor, my objection to this instruction is that
2 there's no Seventh Circuit pattern. The Seventh Circuit has not
3 seen fit to include this in the pattern instructions, and it's
4 unnecessary.

02:14 5 THE COURT: One second. Something just occurred to
6 me. It says, "It should never be considered by the jury in any
7 way in arriving at an impartial verdict."

8 Well, a benefit, i.e., punishment of a witness, is
9 something that can be considered.

02:15 10 MR. KIRSCH: Correct, Your Honor. Correct.

11 THE COURT: So as written, this would have -- this is
12 not correct. There would have to be a modification.

13 MS. SISKIND: Your Honor, we could add something. I
14 would point out that it does say, "punishment for the offenses
02:15 15 charged in the indictment in this matter." So it does specify
16 that it's only punishment for this case. But we could add a few
17 words to make it clearer and resubmit it.

18 THE COURT: I think it really should be clarified
19 because there might be a tendency to -- for the jury to overlook
02:15 20 any benefit that Mr. Bhasin may have received from the
21 government in assessing whether or not he was truthful.

22 MS. SISKIND: We'll make that change, Your Honor.

23 THE COURT: All right.

24 MS. SISKIND: I think that concludes our disputes on
02:16 25 jury instructions.

1 MR. KIRSCH: I think that's it. We can work with the
2 government. We would ask that -- we'll try to add a sentence in
3 this instruction to address the testimony of Mr. Bhasin, but we
4 may be able to submit something that we agree upon.

02:16 5 THE COURT: Lastly, are there any other instructions
6 that you want to discuss?

7 MS. SISKIND: No, Your Honor, not from the government,
8 Your Honor.

9 MR. KIRSCH: No, Your Honor.

02:16 10 THE COURT: I'd like to have you clarify at this point
11 whether you wish to argue before or after the instructions are
12 given?

13 MS. SISKIND: The government's preference would be for
14 Your Honor to instruct the jury and then go to closing arguments
02:16 15 so that we can refer to your instructions in closing arguments.

16 THE COURT: Well, I just want to point out that the
17 jury will have copies of the instructions in hand in the jury
18 box during your closing arguments.

19 MS. SISKIND: Yes, Your Honor.

02:17 20 THE COURT: Unless -- if the court has given the
21 instructions already.

22 MS. SISKIND: Yes, Your Honor.

23 MR. WEBB: My objection to that is that the parties
24 are always free to argue -- we will know what your instructions
02:17 25 are going to be after we argue so that we can argue and

1 faithfully set forth your instructions and we're honor bound not
2 to misstate the instructions.

3 But if you instruct them beforehand and they have the
4 jury instructions, that is very distracting as they focus on the
5 arguments of lawyers.

6 And so I object to instructing them before and would
7 strongly prefer that you instruct them afterwards.

8 THE COURT: Well, I can certainly instruct them not to
9 look at the instructions and actually to put them down. So that
10 shouldn't be a problem.

11 Is there any other reason not to instruct before
12 closing arguments?

13 MR. WEBB: No.

14 THE COURT: I'll think about what you've had to say.

15 We will work on the instructions and try to put them
16 into an appropriate form and e-mail them to you so that you can
17 make sure they're letter perfect and that there's nothing --
18 well, may I suggest -- perhaps I would suggest that you update
19 them in light of our discussions. That would make it easier.

20 You have them in your computers. And, to be very
21 honest, my judicial assistant -- my regular judicial assistant
22 is on vacation. So there's a very practical reason for asking
23 you to do the first cut based upon our discussions.

24 And I will let you know, perhaps, a little later this
25 afternoon where I stand with regard to the other matters,

1 including the FBAR.

2 All right.

3 MR. KIRSCH: Yes, Your Honor.

4 THE COURT: Thank you greatly. I will see you

02:19 5 tomorrow morning.

6 MR. WEBB: Thank you, Your Honor.

7 THE BAILIFF: All rise.

8 THE COURT: Oh, would you please make sure that you

9 give phone numbers to my clerk so that we can call you, if

02:19 10 necessary, later today.

11 (Trial adjourned for the day at 2:19 p.m.)

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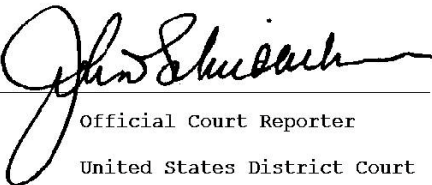
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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF WISCONSIN
3

4 I, JOHN T. SCHINDHELM, RMR, CRR, Official Court
5 Reporter for the United States District Court, Eastern District
6 of Wisconsin, do hereby certify that I reported the foregoing
7 proceedings, and that the same is true and correct in accordance
8 with my original machine shorthand notes taken at said time and
9 place.

10 Dated this 20th day of August, 2012
11 Milwaukee, Wisconsin.

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13 _____
14 Official Court Reporter
United States District Court

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E X H I B I T S

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22	9/30/05-10/3/05 Ahuja/Tandon/HSBC e-mails re .	714	714
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35	11/17/06 Tandon e-mail re credit card PINs....	716	716
57	Documents re Citibank account #140407.....	723	723
64	10/19/09 HSBC check to Ahuja for 4696.71	719	719
	British Pounds		
70	Summary comparing interest income on Forms ...	737	737
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71	Summary of unreported income w/screen prints .	731	731
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2060	Citibank Account # 3-222 opening materials....	727	727
2228	Pebble Beach Golf Course info.....	807	807
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